

Report on the

**BOARD OF EXAMINERS OF
ASSISTED LIVING
ADMINISTRATORS**

Montgomery, Alabama



**Department of
Examiners of Public Accounts**

50 North Ripley Street, Room 3201
P.O. Box 302251
Montgomery, Alabama 36130-2251

Ronald L. Jones, Chief Examiner

State of Alabama
Department of
Examiners of Public Accounts

Telephone (334) 242-9200
FAX (334) 242-1775

Ronald L. Jones
Chief Examiner

Mailing Address:
P.O. Box 302251
Montgomery, AL 36130-2251

Location:
Gordon Persons Building
50 North Ripley Street, Room 3201
Montgomery, AL 36104-3833

August 15, 2007

Senator Larry Dixon
Chairman, Sunset Committee
Alabama State House
Montgomery, AL 36130

Dear Senator Dixon,

This report was prepared to provide information for use by the Sunset Committee in conducting its review and evaluation of the operations of the **Board of Examiners of Assisted Living Administrators** in accordance with the *Code of Alabama 1975*, Section 41-20-9.

The report contains unaudited information obtained from the management, staff, and records of the **Board of Examiners of Assisted Living Administrators**, in addition to information obtained from other sources.

Please contact me if you have any questions concerning this report.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald L. Jones".

*Ronald L. Jones,
Chief Examiner*

Examiner

Tony Yarbrough

CONTENTS

PROFILE	1
PURPOSE/AUTHORITY	1
BOARD CHARACTERISTICS	1
OPERATIONS	2
FINANCIAL INFORMATION	4
SIGNIFICANT ITEMS	5
STATUS OF PRIOR FINDINGS & SIGNIFICANT ITEMS	8
ORGANIZATION	9
PERSONNEL	9
PERFORMANCE CHARACTERISTICS	9
SMART BUDGETING	12
REGULATION IN CONJUNCTION WITH OTHER ENTITIES.....	15
FINANCIAL INFORMATION.....	16
SCHEDULE OF FEES	16
SCHEDULE OF OPERATING RECEIPTS, DISBURSEMENTS, AND BALANCES.....	17
OPERATING RECEIPTS VS OPERATING DISBURSEMENTS (CHART)	17
QUESTIONNAIRES	18
BOARD MEMBER QUESTIONNAIRE	18
LICENSEE QUESTIONNAIRE	20
APPENDICES	25
SMART BUDGETING REPORTS	25
STATUTORY AUTHORITY	30
BOARD MEMBERS	45
AGENCY RESPONSE TO SIGNIFICANT ITEMS	47

PROFILE

Purpose/Authority

The Board of Examiners of Assisted Living Administrators was created by Act 1057, *Acts of Alabama 2001*. The board provides and enforces standards for licensure and regulation of persons who serve, act, and practice as assisted living administrators. The *Code of Alabama 1975*, Sections 34-2A-1 through 34-2A-16 provides the statutory authority for the board. The board does not license or regulate assisted living facilities.

<u>Board Characteristics</u>	
Members	9 <i>Code of Alabama 1975</i> , Sections 34-2A-3(a)
Term	<ul style="list-style-type: none">• 3 year staggered terms• No more than two consecutive full terms• Members continue to serve until a successor has been appointed by the Governor <i>Code of Alabama 1975</i> , Sections 34-2A-3(e)
Selection	Appointed by the Governor from a list of nominees provided by the Assisted Living Association of Alabama, the Medical Association of Alabama, and the Alabama Nursing Home Association. <i>Code of Alabama 1975</i> , Sections 34-2A-3(a)
Qualifications	<ul style="list-style-type: none">• Citizen of the United States.• Resident of the state of Alabama.• Five (5) must be duly licensed and registered assisted living administrators.• One (1) must be a physician licensed under the laws of the state who is actively concerned in a practice with the care of chronically ill and infirm, aged patients.• One (1) must be a licensed nursing home administrator who in the same or contiguous facility manages assisted living beds.• Two (2) must be consumer members with at least one consumer member being 65 years of age or older. No consumer member, or a spouse or immediate family member of a consumer member, shall be a licensee of the board or be employed in the assisted living profession. <i>Code of Alabama 1975</i> , Sections 34-2A-3
Racial Representation	No specific statutory requirement. One (1) black female member

Geographical Representation	No statutory requirement.
Consumer Representation	Two (2) members required. <i>Code of Alabama 1975</i> , Section 34-2A-3(b)
Other Representation	The membership of the board shall be inclusive and reflect the racial, gender, geographical, urban/rural, and economical diversity of the state. <i>Code of Alabama 1975</i> , Sections 34-2A-3(a)
Compensation	Not less than \$50 or more than \$100 to be determined by the board. <i>Code of Alabama 1975</i> , Section 34-2A-3(h). Currently members are paid \$75/day for the time spent in the performance of official duties. Members are also paid travel expense reimbursement at the same rate as state employees.
<u>Operations</u>	
Administrator	Amy Findley, Executive Director Annual salary \$37,500 – (75% time, 30 hours per week) The executive director is also an employee of and is the office manager of the Assisted Living Association of Alabama.
Location	Assisted Living Association 5921 Carmichael Road Montgomery, AL 36117
Type of License	<u>Category I License</u> (Assisted Living Facilities) <u>Category II License</u> (Specialty Care Assisted Living Facilities) <u>Provisional License</u> Issued to every applicant for licensure who passes Section A of the Category I examination or Section A of the Category II examination. A provisional licensee is qualified to temporarily (nine months) administer an assisted living facility or a specialty care assisted living facility or a combination facility. (Administrative Rule 135-X-7.01) A provisional licensee who completes the required classroom training and passes Section B of the Category I or II examinations is issued a full license.

	<div>Licenses as of 04/04/07</div> <table><tr><td>Category I</td><td>112</td></tr><tr><td>Category II</td><td>281</td></tr><tr><td>Provisional</td><td>47</td></tr></table>	Category I	112	Category II	281	Provisional	47																						
Category I	112																												
Category II	281																												
Provisional	47																												
Renewal	<div>Annually during the anniversary month of issuance.</div> <div>Online renewal is not available.</div> <div>Code of Alabama 1975, Sections 34-2A-12</div>																												
Examinations	<div>The examination was developed by Savage Consultants, Inc., a professional testing service. The examinations are administered and graded by the executive director.</div> <div>Examination Statistics:</div> <table><tr><th>Year</th><th>Pass</th><th>Fail</th><th>Total</th></tr><tr><td>2003</td><td>328 (92%)</td><td>28 (8%)</td><td>356</td></tr><tr><td>2004</td><td>60 (97%)</td><td>2 (3%)</td><td>62</td></tr><tr><td>2005</td><td>80 (100%)</td><td>0 (0%)</td><td>80</td></tr><tr><td>2006</td><td>93 (96%)</td><td>4 (4%)</td><td>97</td></tr><tr><td>2007⁽¹⁾</td><td>59 (92%)</td><td>5 (8%)</td><td>64</td></tr><tr><td>Total</td><td>620 (94%)</td><td>39 (6%)</td><td>659</td></tr></table> <div>(1) Totals through April 20, 2007</div> <div>Code of Alabama 1975, Sections 34-2A-2 & 8</div>	Year	Pass	Fail	Total	2003	328 (92%)	28 (8%)	356	2004	60 (97%)	2 (3%)	62	2005	80 (100%)	0 (0%)	80	2006	93 (96%)	4 (4%)	97	2007 ⁽¹⁾	59 (92%)	5 (8%)	64	Total	620 (94%)	39 (6%)	659
Year	Pass	Fail	Total																										
2003	328 (92%)	28 (8%)	356																										
2004	60 (97%)	2 (3%)	62																										
2005	80 (100%)	0 (0%)	80																										
2006	93 (96%)	4 (4%)	97																										
2007 ⁽¹⁾	59 (92%)	5 (8%)	64																										
Total	620 (94%)	39 (6%)	659																										
Continuing Education	<div>Category I Licensees – 12 hours annually</div> <div>Category II Licensees – 18 hours annually</div> <div>Code of Alabama 1975, Sections 34-2A-12</div>																												
Reciprocity	<div>The board may grant reciprocity to an assisted living administrator:</div> <div><div>Who has been issued a license by another state or</div><div>Who has been issued a certificate of qualification by a national organization.</div></div> <div>The other state or national organization must have maintained a system and standards of qualification and examinations that were substantially equivalent to those required in Alabama at the time of issue.</div> <div>The other state or national organization must give similar recognition to Alabama licensees.</div> <div>Code of Alabama 1975, Sections 34-2A-11</div>																												

Employees	1 (one) – part-time
Legal Counsel	Bettie Carmack, Assistant Attorney General Attorney General’s Office
Subpoena Power	Not in the board’s enabling statutes
Internet Presence	www.boeala.state.al.us . The board’s web site contains: <ul style="list-style-type: none"> • Home page with contact information • Board Member listing • Description of the board • Schedule of Board Meetings • Copies of Board Minutes from previous meetings • Qualifications for Licensure • Course Approval • Classroom Training & Test Dates • Rules and Regulations • Fee Schedule • Forms & Applications • Links to Alabama Department of Public Health & Assisted Living Association
Attended Board Member Training	Board Chairman (‘05), Board Member (‘03)
<u>Financial Information</u>	
Source of Funds	Licensing fees
State Treasury	Yes, Special Revenue Fund 1109 <i>Code of Alabama 1975</i> , Sections 34-2A-6
Unused Funds	Retains unexpended funds.

SIGNIFICANT ITEMS

1. The board did not register board information with the Secretary of State's Office, as required by law. The *Code of Alabama 1975*, Section 36-14-17 requires that "by December 4, 2006, the chair of an existing board or the appointing authority for a newly created board shall provide the Secretary of State . . . the name of the board, its mailing address, telephone number, and email address; the name of each appointee to the board; the date of appointment, term of appointment, and expiration date of the term of appointment of each appointee; and the name and position of the appointing authority of each appointee." Although the executive director was informed of this discrepancy in January 2007, as of June 8, 2007 the information remained unposted.

2. Notice of a board meeting held January 11, 2006 was not posted on the Secretary of State's Internet website, as required by Alabama's Open Meetings Act. In addition, although a notice posted on the Secretary of State's Internet website indicates a meeting on November 14, 2006, minutes of the November meeting record the actual date of the meeting as November 21, 2006. Inaccurate posting of notices could cause persons interested in attending board meeting to miss meetings. Under the Open Meetings Act of 2005 as codified in the *Code of Alabama 1975*, Section 36-25A-3(a)(2), "Any governmental body with statewide jurisdiction shall submit notice of its meeting to the Secretary of State."

3. The board improperly granted a provisional license to an applicant who marked on her application that she had been convicted of a felony. The board was not able to provide records of its actions to resolve the issue. During the application review process performed by the board, the board failed to request from the applicant mandatory information required by Administrative Rule 135-X-5-.03(3) which states that, "An applicant for examination who has been convicted of a felony by any court in this state . . . shall not be admitted to or be permitted to take the examination unless he/she shall first submit to and file with the board, a certificate of good conduct granted by the Board of Parole or, . . . an equivalent written statement or document".

During the November 21, 2006 board meeting, the board received notice from the Alabama Department of Public Health (ADPH) of this condition. During an audit/survey of an assisted living facility ADPH found that the administrator's provisional license had been approved by the board although she had indicated a felony conviction on her application. In response, the board approved revising applications to include text from its administrative Rule 135-X-5-.03(3) concerning felony convictions.

Records show that the board notified the licensee of the issue in a letter dated December 21, 2006 and the licensee was asked to supply the board with information concerning the felony conviction(s).

Additionally, the letter states that the board had received information suggesting that

additional criminal charges and/or convictions may have occurred since her application was filed that could affect her provisional license. The letter indicates that the board had convened a Probable Cause Committee to determine if probable cause existed to pursue disciplinary action. The licensee was granted 30 days to submit an explanation and any relevant documentation regarding the allegations. The letter also states that the Probable Cause Committee would vote whether to file a formal complaint against her license after January 24, 2007.

The executive director stated that the provisional license expired July 11, 2007, but had been surrendered earlier at the request of the board's legal counsel. However, the board was not able to provide records to indicate the formation of a Probable Cause Committee, receipt of any documentation from the licensee or any action by the board to resolve the situation.

4. The board leases office space from the Assisted Living Association for \$264 per square foot, a very high rate compared to other office space in the area leased by state entities. Prior to a decrease to \$264 per square foot that occurred on May 1, 2007 the board was leasing the space for \$420 per square foot. According to the Examiners of Public Accounts publication, Real Property Leased from Private Entities as of October 1, 2006, the average cost per square foot for office space in Montgomery is \$9.92. The board's lease includes a 10' x 10' furnished office including a computer and common space shared with the Assisted Living Association that includes a receptionist area and conference room.

This condition is a matter of concern to two of the three board members who responded to our questionnaire. One board member responded, "We have attempted to hire an independent executive director at the advice of the AG's Office due to conflict of Probable Cause Committee. We are getting pressure from the A.L.A.A., the board's advisor, not to follow instructions because according to them, we cannot afford it. We could if we didn't pay \$40,000 rent for office space in their office. We asked for lower rent. They agreed to 90 days "abatement." I believe that this lease did not clear office of lease Management and is unreasonable. The ALAA constantly tries to tell the board how to govern instead of advise. We are at a deficit because of rent!"

A second responding board member stated that, "Additionally, we need to rework the rent schedule between the two entities."

A licensee responding to our questionnaire stated, "They also pay rent \$3,500 per month or \$42,000 annually. The board's budget is \$86,000. I have been to that office on at least two occasions. That office space is at best about 8 x 12. How is it ethical to pay \$42,000 for one room? They have supposedly rented the same furniture for a shared person for 5 years now. Could they have not purchased it by now? What did the Education Director (the association's half of the employee use) during this time? There has to be more affordable rent in Montgomery. The financial relationship between the board and association should be investigated. It is not fair that our license

fees are so high and it looks to me that the board is funding the association. They get \$72,000 of the total budget. If it's not illegal, it certainly is unethical."

Before a state agency leases office space, the Office of State Buildings & Space Management within the Department of Finance is normally contacted for leasing options. The Office of State Buildings & Space Management has adopted uniform standards for allocation of facilities owned or leased by the state. Space Management also investigates all requests for additional facilities needed by state agencies and makes recommendations concerning the need for and the best method of allocating or acquiring such facilities. The board's former executive director contacted Space Management in February, 2007 in search of some options to consider for lease. Space Management provided her with a list of rental properties in the same east Montgomery vicinity as the board's current office. Board records do not indicate any consideration of these options.

5. The contract for facilities and staffing between the board and the Assisted Living Association was not bid in compliance with the state's bid law. The board contracted with the Assisted Living Association to provide the board with a computer and furnished office space for \$26,400/year and an association staff person for \$37,500/year to serve as the board's executive director,. Attorney General's Opinion # 2002-078 states that, "Contracts between state licensure boards and a consultant for the services of an executive director, administrative staff, equipment and/or physical facilities are subject to the competitive bid law." Although the competitive bid law [*Code of Alabama 1975*, Section 41-16-20 et seq] in Section 41-16-75 authorizes an exemption from bidding if a provider is the sole source of the needed goods or services, we find no duties of the board's executive director that are sufficiently different from those of other state licensing boards to qualify the executive director for this exemption.

6. The board's enabling statutes contain a citizenship requirement that may be unconstitutional. The *Code of Alabama 1975*, Section 34-2A-8(a) provides that, "The board shall admit to examination for licensure as an assisted living administrator any candidate who submits evidence of good moral character and suitability as prescribed by the board and who submits evidence to the board that he or she is at least 19 years of age, a citizen of the United States, or that he or she has duly declared his or her intention of becoming a citizen of the United States, that he or she is a high school graduate or has completed an educational program equivalent thereto, and that he or she has completed any additional educational requirements prescribed by the board."

The U. S. Supreme Court has held that refusal of a professional license based solely upon lack of citizenship is unconstitutional. In re Griffiths, 413 U. S. 717 (1973), the United States Supreme Court held that exclusion of aliens from the practice of law violates the Equal Protection Clause of the Fourteenth Amendment. Also, the U. S. Supreme Court in Examining Board v. Flores De Otero, 426 U. S. 572 (1976) held that "The statutory restriction on the ability of aliens to engage in the otherwise lawful private practice of civil engineering is plainly unconstitutional."

7. The board does not receive notice of discrepancies relative to assisted living administration resulting from surveys of assisted living facilities by the Department of Public Health. The Department of Public Health routinely conducts surveys of assisted living facilities in the state. Discrepancies discovered during a survey can be related to the actions of board licensees. According to the Supervisor of the Assisted Living Unit of the Alabama Department of Public Health, such discrepancies are reported to the Assisted Living Association by telephone, but are not reported to the Board of Assisted Living Administrators. The executive director for the Board of Assisted Living Administrators also stated that the board does not receive reports of such discrepancies from the Department of Public Health.

STATUS OF PRIOR FINDINGS & SIGNIFICANT ITEMS

All prior findings have been resolved, except the following:

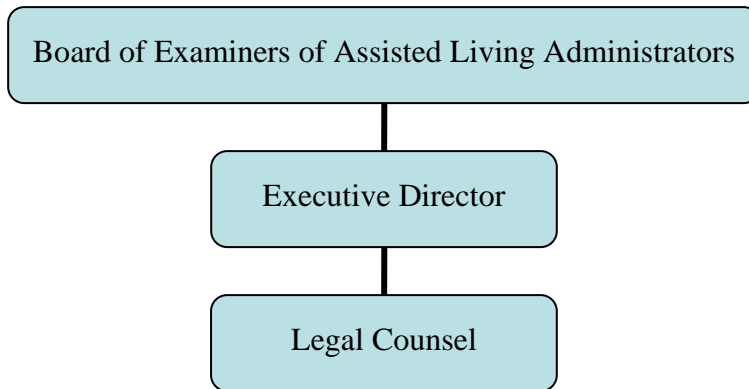
Prior Finding – The board did not follow the process required by the state’s Administrative Procedure Act for creating an administrative rule. During its September 24, 2004 board meeting, the board approved an Exigent Circumstance/Alternative Continuing Education Plan, where the board approves an “entity” to develop a self-study program due to exigent circumstances (hurricane, pregnancy, etc.). These programs are presented to the board for approval on a case-by-case basis.

Prior Recommendation – The board should follow the rule-making requirements of the Administrative Procedure Act when making this rule.

Current Status – The issue remains unresolved. As of April 2, 2007, the board had not submitted the rule change to the Legislative Reference Service for advertisement and public inspection. A rule not processed in accordance with the requirements of the Administrative Procedure Act is void, according to law.

The board’s enabling statutes in the *Code of Alabama 1975*, Section 34-2A-5 provides that, “The Alabama Administrative Procedure Act shall govern all rule-making proceedings of the board.”

ORGANIZATION



PERSONNEL

The board has no direct employees. The board contracts with the Alabama Association of Assisted Living Administrators for the services of an executive director [white female] and furnished office space.

Attorney Bettie Carmack is provided by the Attorney General's Office to furnish legal services to the board.

PERFORMANCE CHARACTERISTICS

Number of Licensees per Employee – 393

Total Expenditure per Licensee (2006 Fiscal Year) - \$189

Number of Persons per Licensee in Alabama and Surrounding States

	Population (Estimate)*	Number of Licensees	Persons per Licensee
Alabama	4,599,030	393	11,702
Florida	18,089,888	N/A ⁽¹⁾	N/A ⁽¹⁾
Georgia	9,363,941	N/A ⁽²⁾	N/A ⁽²⁾
Mississippi	2,910,540	N/A ⁽³⁾	N/A ⁽³⁾
Tennessee	6,038,803	450 ⁽⁴⁾	13,420 ⁽⁴⁾

* July 1, 2006 Census Bureau Population Estimates Report

⁽¹⁾Florida administrators are not required to be licensed or certified; they are required to attend and pass a 26 hour course before gaining employment as an administrator/manager. Currently there are 2,427 licensed assisted living facilities in Florida.

⁽²⁾Georgia administrators are not required to be licensed or certified. Currently there are 1,800 licensed home care facilities in Georgia.

⁽³⁾Mississippi administrators are not required to be licensed or certified. Currently there are 187 licensed assisted living facilities in Mississippi.

⁽⁴⁾Tennessee administrators are required to be certified only. Tennessee has certified approximately 450 administrators. Currently there are 200 licensed assisted living facilities in Tennessee.

Notification to Licensees of Board decisions to Amend Administrative Rules

Except for items noted in the Significant Items section of this report, the board complied with procedures prescribed in the Administrative Procedures Act which includes publication of proposed rules in the Administrative Monthly, and public hearings on proposed rules.

Complaints

The board received one complaint during the period since the last review for the Sunset Committee. The complaint was reported to the board on November 9, 2005. The board's Probable Cause Committee met on February 2, 2006 and decided that the rules and regulations of the Board of Examiners of Assisted Living Administrators had not been violated. The complainant and respondent were notified by mail on February 7, 2006 of the committee's findings.

Complaint Process

Investigative Phase	<p>Complaints or charges against any licensee shall be in writing on forms provided by the board, and shall be submitted to the board and investigated.</p> <p>The board's Investigative Committee investigates all complaints of a general nature and determines if the complaint needs to be dismissed or further disciplinary action needs to be taken. The Investigative Committee is comprised of the deputy attorney general assigned to the board, the board chairman or vice-chairman (whichever is available) and two board members.</p> <p>The board's Hearing Committee investigates all complaints that are a possible violation of <u>Administrative Rule 135-X-7-.02(1)(a-r)</u>. The Hearing Committee consists of 3 non-consumer members and one non-voting consumer member and shall determine whether charges justify a hearing or if the charges should be dismissed as frivolous or unfounded.</p>
Anonymous Complaints	Anonymous complaints are not accepted.

Recommendation Phase	<p>If the Investigative Committee determines that further disciplinary action needs to be taken, the committee may (a) refuse an applicant's license, (b) suspend a licensee's license, (c) revoke an applicant/licensee's license, or (d) reprimand the individual. The applicant or licensee shall receive written notice of the decision and has 30 days to request a hearing or rehearing. All decisions made by the investigative committee are reported to the board.</p> <p>If the Hearing Committee determines that charges should not be dismissed, the individual shall be informed of the charges via personal service or certified mail and informed that he/she is entitled to a hearing before the board. The board may (a) suspend an individual's license, (b) revoke the individual's license, (c) reprimand the individual, (d) censure the individual or (e) fine the individual up to \$1,000 per violation.</p>
Board Action Phase	<p>Upon receiving written notification of actions taken by the board for a general complaint, the applicant or licensee may request in writing a hearing or rehearing before the board. If the applicant or licensee requests a hearing, it shall be held before a quorum of the board, or, with the consent of the applicant, before an Administrative Law Judge or before less than a quorum of the board. If the Administrative Law Judge makes the decision, the board can accept or reject the decision, but must act on the judge's order within 30 days of the order being issued. The respondent has 30 days from notice to appeal the decision to the circuit court.</p> <p>If the Hearing Committee determines that the charges are not to be dismissed, the individual shall be informed of the charges via personal service or certified mail and informed that he/she is entitled to a hearing before the board. The hearing shall be before a quorum of the board and two thirds vote of the professional members present (not including the consumer member) shall be required to discipline the individual. The hearing shall be closed to the public. The decision of the board, however, shall be included in the minutes of the meeting.</p> <p>Appeals from any order or judgment rendered thereon by the circuit court to the Supreme Court shall be available as in other cases. The Board shall report to the Department of Public Health all final disciplinary actions taken under this section.</p>

	The rules governing administrative hearings provided in the Administrative Procedure Act are followed in the formal hearings.
Resolution Phase	The board sends all offenders a letter along with a consent administrative order for the offender to sign and return. The letter states that the signed order and fine must be returned within 30 days of receipt of the letter. The board may also discipline its licensees by the adoption and collection of administrative fines, not to exceed \$1,000 per violation, and may institute any legal proceedings necessary to affect compliance.
Communication with Complainants	Complainants and respondents are notified within 30 days of resolution of the complaint.

SMART BUDGETING

Acts of Alabama, 2004-50 (HJR89) states, “That all state agencies and entities receiving legislative appropriations are requested to submit to the Joint Legislative Budget Committee budget proposals for the 2005-2006 fiscal year to be submitted to the 2005 Regular Session and for each succeeding fiscal year. The Director of Finance is requested to inform each public agency or entity of our desires concerning this matter.”

To comply with this request, the Director of Finance implemented a system of budgeting that requires each agency to report its performance, the system to be named SMART, an acronym for Specific, Measurable, Accountable, Responsive, and Transparent.

As a part of the SMART Budgeting system, each agency is required to submit its goals and objectives to the Department of Finance – the goals to be stated as long-term, multi-year targets which are to be achieved through accomplishment of stated objectives, which are single-year targets. In order to report progress, the goals and objectives must necessarily be designed so that the agency can measure annual progress toward their achievement.

The SMART Budgeting system includes an Operations Plan and a Quarterly Performance Report. The performance report presents information on achievement of an agency’s annual objectives, and is the SMART Budgeting report that presents performance information. If an agency has not included at least one objective for each goal, performance relative to that goal will not be reported. For the 2006 fiscal year, each licensing/regulatory agency was required to have at least one goal and one or more objectives directly related to the goal. Additional annual objectives were allowed without corresponding goals. The board’s Operations Plans and Quarterly performance Reports are presented in the appendices of this report.

Among agencies that were not familiar with reporting performance, we found confusion as to how to design the goals and objectives and how to differentiate between goals and objectives. Routinely we found goals with no directly related objectives. Both goals and objectives were often too abstract to be measurable, and progress toward their achievement could not be meaningfully reported. The Department of Finance is aware of these deficiencies and is taking remedial steps.

In these respects, the Board of Examiners of Assisted Living Administrators was no exception. Some goals were not accompanied by directly related objectives. Some goals and objectives were abstract, and progress toward their achievement could therefore not be measured and reported.

The board submitted a 2006 and 2007 Operations Plans and data for the SMART Quarterly Performance Report. Goals and projected performance data for the board's objectives for the year are presented in the Operations Plan. Actual performance toward achievement of objectives for 2006 is presented on the board's 2006 Quarterly Performance Report.

The board's performance goals and objectives for the 2006 and 2007 fiscal years and the examiner's comments are presented in the following table.

2006 GOALS	COMMENTS
1. To ensure that only qualified persons enter the profession.	<ul style="list-style-type: none"> • Is a statement of the board's mission, not a performance goal. Does not address how well a board activity is done. • Not measurable. • No directly related objective • Progress toward achievement not reported
2. To maintain essential information on all licensed assisted living administrators in Alabama.	<ul style="list-style-type: none"> • Is a workload statement, not a performance goal. Does not address how well a board activity is done. • No directly related objective • Progress toward achievement not reported.
3. To resolve all complaints satisfactorily within a standard amount of time.	<ul style="list-style-type: none"> • No measurable standard to be achieved. • No directly-related objective • Progress toward achievement not reported.

2006 OBJECTIVES	ACTUAL PERFORMANCE	COMMENTS
1. Cost per licensee.	<ul style="list-style-type: none"> Remained the same. 	<ul style="list-style-type: none"> No specific target level of performance is stated within the objective. Cannot determine if the intended performance level was achieved.
2. Reduce administrative time required to process each initial license by 5%.	<ul style="list-style-type: none"> Did not reduce time by 5%. Time increased or stayed the same. 	<ul style="list-style-type: none"> Does not state the actual per cent achieved. Amounts reported are a “best guess” figure and were not derived from any actual recording of time spent processing initial licenses.
3. Reduce administrative time required to process monthly renewal licenses by 10%.	<ul style="list-style-type: none"> Did not reduce time by 10%. 	<ul style="list-style-type: none"> Does not state the actual per cent achieved Amounts reported are a “best guess” figure and were not derived from any actual recording of time spent processing renewal of licenses.

2007

2007 GOALS	COMMENTS
1. To ensure that only qualified persons enter the profession.	<p>Is a statement of the board’s mission, not a performance goal. Does not address how well a board activity is done.</p> <p>No directly related objective. Consequently, progress toward achievement will not be reported</p>
2. To maintain essential information on all licensed assisted living administrators in Alabama.	<p>Is a workload statement, not a performance goal. Does not address how well a board activity is done.</p> <p>No directly related objective. Consequently, progress toward achievement will not be reported.</p>

3. To resolve all complaints satisfactorily within a standard amount of time.	<p>No level of performance to be achieved is stated.</p> <p>No directly-related objective. Consequently, progress toward achievement will not be reported.</p>
---	--

2007 OBJECTIVES	COMMENTS
1. Cost per licensee will stay the same.	No specific target level of performance is stated within the objective (cost not stated).
2. Reduce administrative time required to process monthly renewal license.	No time stated from which to determine if time is reduced.
3. Reduce administrative time required to process CEU requests and approvals.	No time stated from which it can be determined if time is reduced.

REGULATION IN CONJUNCTION WITH OTHER ENTITIES

The Alabama Department of Public Health licenses and regulates assisted living facilities. Surveys of facilities performed by the ADPH can produce information that may affect the licensure of the administrator of a surveyed assisted living facility.

The Assisted Living Association of Alabama - The governing body of the Assisted Living Association of Alabama, Inc., “shall constitute an advisory council to the board, and the board shall be required to counsel with the advisory council in connection with the administration of this chapter.” (*Code of Alabama* 1975, Section 34-2A-7)

The office manager of the Assisted Living Association of Alabama is also the board’s executive director.

FINANCIAL INFORMATION

Schedule of Fees

<i>Fee</i>	<i>Statutory Authority</i>	<i>Amount</i>
Initial Application Fee	34-2A-10(a)(2)	\$50
Examination Fee	34-2A-8(a)	\$125 Section A \$125 Section B
License Fee	34-2A-10(a)	\$100
License Renewal Fee	34-2A-12(b)	\$150
Reciprocity Questionnaire	34-2A-11(a)	\$50
Late Renewal Penalty	34-2A-12(d)(2)	\$250
Inactive Reactivation Fee	34-2A-12(f)	\$250
Bad Check Fee	8-8-15	\$30
Emergency Permit Fee	34-2A-10(b)	\$200
Administrative Fee	34-2A-11(b)	\$75
Administrative Fines	34-2A-13(a)	Not to exceed \$1,000 per violation
Copies (per page)	36-12-41	\$0.75 (first 25 pages) \$0.25 (after 25 pages)

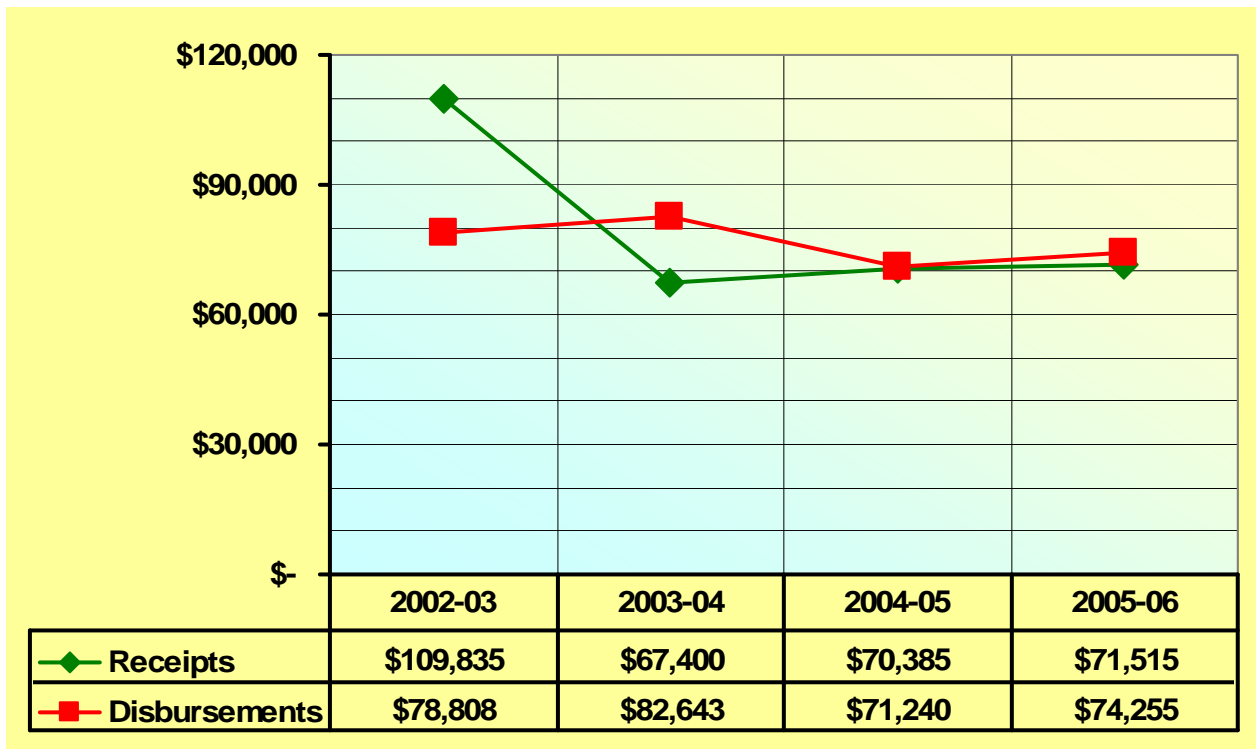
Schedule of Operating Receipts, Disbursements, and Balances

October 1, 2003 through September 30, 2006

	<u>2005-06</u>	<u>2004-05</u>	<u>2003-04</u>	<u>2002-03</u>
<u>Receipts</u>				
Licensing Fees	\$71,515.00	\$70,385.00	\$67,400.00	\$109,835.00
<u>Disbursements</u>				
Personnel Costs	4,922.60	1,125.00	26,492.82	38,299.78
Employee Benefits	376.59	86.06	6,064.42	10,946.93
Travel-In-State	1,319.03	1,238.86	1,202.62	1,920.54
Rentals and Leases	38,500.00	38,100.00	33,600.00	24,205.00
Utilities and Communications	191.25	0.00	0.00	0.00
Professional Services	28,691.01	30,531.19	13,564.50	220.17
Supplies, Materials & Operating Expenses	254.15	158.90	1,718.49	3,215.20
Total	74,254.63	71,240.01	82,642.85	78,807.62
Excess (Deficiency) of Receipts Over Disbursements	(2,739.63)	(855.01)	(15,242.85)	31,027.38
Cash Balance at Beginning of Year	35,005.81	35,860.82	51,103.67	20,076.29
Cash Balance at End of Year	32,266.18	35,005.81	35,860.82	51,103.67
Reserved for Year-end Obligations	(11,204.56)	-	(356.83)	(650.00)
Unobligated Cash Balance	\$21,061.62	\$35,005.81	\$35,503.99	\$50,453.67

Operating Receipts Vs Operating Disbursements (Chart)

October 1, 2002 through September 30, 2006



QUESTIONNAIRES

Board Member Questionnaire

Questionnaires were mailed to all nine (9) board members. Three (3) responded.

Question #1

What are the most significant issues currently facing the Board of Examiners of Assisted Living Administrators and how is the board addressing these issues?

1. "Change current level of difficulty of testing." *"Add AIT program to prepare candidates to operate facilities."*
2. "Adequate funding, closing assisted living facilities that are not accredited and continue to be sure that all facilities have accredited administrators."
3. "We were sharing an executive director with the Assisted Living Association. This was not adequate. We have now hired our own executive director. Additionally, we need to rework the rent schedule between the two entities."

Question #2

What changes to the Board of Examiners of Assisted Living Administrators laws are needed?

1. "None."
2. "I do not know of any changes needed."
3. "I don't know of changes that need to be made."

Question #3

Is the Board of Examiners of Assisted Living Administrators adequately funded?

1 Yes 2 No 0 No Response

1. "We need additional funds. We are looking for an additional (cheaper) place for our one staff person with conference room."
2. "With the changes stipulated in question #1, I feel that our finances will be adequate."

Question #4

Is the Board of Examiners of Assisted Living Administrators adequately staffed?

3 Yes 0 No 0 Unknown

1. "Yes. We have only one staff member. She is excellent and does her own secretarial work."

Question #5

What is the purpose of the board's fiscal year end balance of unobligated funds?

1. "There will not be any. We have attempted to hire an independent executive director at the advice of the AG's Office due to conflict of Probable Cause Committee. We are getting pressure from the A.L.A.A., the board's advisor, not to follow instructions because according to them, we cannot afford it. We could if we didn't pay \$40,000 rent for office space in their office. We asked for lower rent. They agreed to 90 days "abatement." I believe that this lease did not clear office of lease Management and is unreasonable. The ALAA constantly tries to tell the board how to govern instead of advise. We are at a deficit because of rent!"
2. "We have no unobligated funds. Even more funds are needed. This is a needed organization. I am the one consumer member and I feel that the board is doing a necessary task and is needed."
3. "I think the purpose of the unobligated funds should be to act as a "rainy day" fund for any future unplanned expenses."

Licensee Questionnaire

Questionnaires were mailed to one hundred licensed assisted living administrators. Forty-eight responded.

Question #1

Do you think regulation of your profession by the Board of Examiners of Assisted Living Administrators is necessary to protect public welfare?

40 Yes 06 No 1 Unknown 1 No Opinion

Question #2

Do you think any of the Board of Examiners of Assisted Living Administrators laws, rules, and policies are an unnecessary restriction on the practice of your profession?

11 Yes 32 No 3 Unknown 2 No Opinion

1. "Unknown. In some cases."
2. "Yes. 30 day pre-approval for CEU's, if a great seminar who is already listed for CEU's for most health care professionals should not need 30 day pre-approval from the board."

Question #3

Do you think any of the Board of Examiners of Assisted Living Administrators requirements are irrelevant to the competent practice of your profession?

10 Yes 38 No 0 Unknown 0 No Opinion

Question #4

Are you adequately informed by the Board of Examiners of Assisted Living Administrators of changes to and interpretations of board positions, policies, rules and laws?

30 Yes 16 No 0 Unknown 2 No Opinion

Question #5

Has the Board of Examiners of Assisted Living Administrators performed your licensing and/or renewal in a timely manner?

44 Yes 03 No 1 No Opinion

1. "No. Renewal is late this year."
2. "Yes. Excellent."

Question #6

Do you consider mandatory continuing education necessary for competent practice?

42 Yes 05 No 1 No Opinion

3. "Yes. However, CEU requirements and approval process is very limiting and needs to be changed so we can get credit for some really good programs."

Question #7

Has the Board of Examiners of Assisted Living Administrators approved sufficient providers of continuing education to ensure your reasonable access to necessary continuing education hours?

31 Yes 12 No 03 Unknown 2 No Opinion

1. "No Opinion. I would like to see the acceptance of CEU hours that have already been approved for Nursing Home Administrators but not yet approved for Assisted Living Facility Administrators."
2. "No Opinion. I don't depend on the board for CEU's."

Question #8

What do you think is the most significant issue(s) currently facing your profession in Alabama and what is the Board of Examiners of Assisted Living Administrators doing to address the issue(s)?

1. "Changes in rules and regulations from ADPH are not communicated to ALF's or ALF association in a timely manner. Inconsistent enforcement of ADPH rules during facility surveys."
2. "Clearer ADPH regulations." *"Ongoing relationship building and collaboration."*
3. "No funding for these homes." *"Not sure what the board is doing."*
4. "Could do more. Facilities that run skilled care through assisted living facility committees. Unlicensed facilities that do not get a survey. Surveys are too far behind."

5. "There seems to be an increase in scores below 80 "Red Tags" handed to facilities by ADPH. Several of the tags cite the administrator for negligent oversight or the governing authority for the operations. I don't know if this is reflective of the content of ALAA conferences not targeting the needs of the administrator or if it is because the administrator exam was originally written on an 8th grade level. That was in 2001 or 02. Perhaps it is time to upgrade to a higher educational level. Perhaps incorporating an administrator in training internship in addition to classroom training would allow the person to put theory into practice prior to actually assuming independent responsibility for operations in a facility."
6. "That all assisted living administrators are not licensed and that makes it look bad on all the rest if something adverse happens. There is such a need for assisted living for people that can't afford one." *"I don't know what is being done with either problem. Perhaps you could lobby to change, so Medicare or Medicaid would assist with funding."*
7. "Administrators must stay informed on all regulatory changes affecting the assisted living market." *"By requiring continuing education, the board makes it possible for administrators to be informed regarding these changes."*
8. "Changes in state regulations that mirror requirements for nursing homes." *"Do not know what the board is doing about this."*
9. "State surveys."
10. "Requirements for administrators are too low and not stringent enough. Age is too low and educational and preparatory education too low. Also, the lack of a nurse as a mandatory staff (consultant) leaves a large gap in quality of care. Also, plainly stated criteria for resident admission are lacking."
11. "All of the regulations." *"I don't know what they are doing about it."*
12. "Non-licensed assisted living facilities." *"The board is active with the legislature trying to correct this issue."*
13. "This survey process is unfortunately becoming very negative like the nursing home survey process. This needs to be positive and a learning process. Unlicensed homes are an issue." *"I am not sure what the board is doing about these."*
14. "The apparent monopoly of XXXX XXXXXXXXXXXX being the only company sent by the state into ALF/SCALFS that have performed poorly in survey."
15. "The fact that we are not nursing homes. The board works hard to make sure we are not looked at by the state as nursing homes and our regulations should reflect assisted living only. So should our surveys by the state."
16. "Unlicensed facilities and operators providing services throughout Alabama. State Department of Public Health implementing rules and regulations without input or consultation from the profession. Board of Examiners of Assisted Living Administrators needs to be closely working with ALAA."
17. "Minimizing additional assisted living regulation that seeks to develop a more medical model in assisted living facilities and turn them into quasi-nursing homes." *"Continuing to encourage new licensees by the board enhances base of qualified leaders in the industry thereby improving services without additional regulation."*
18. "Make sure we are on top of all changes in the ALF or SCALF rules and regulations by the State Health Department." *"I get emails on all changes from the board."* "We need to make sure our staff has all the training possible. I would like to get emails on staff training monthly."
19. "Survey process and end result to the administrator."

20. "The most significant issue facing my profession is finding the right kind of employees to work and keeping them. The board really can't help me with this issue. It's the kind of people we have around us."
21. "Regulation changes without constituent input." *"Not sure if they are involved."*
22. "Continued changes of laws, lack of insurance providers and no Medicare/Medicaid."
23. "I believe a strong effort needs to be made for administrators to have a stronger say and more of a voting right in our regulations."
24. "A need for notification of assisted living administrator's job openings."
25. "Medicaid Waiver Program; regulatory compliance; staff training; risk management/safety; peer review; and quality assurance."
26. "The most significant issue I feel is facilities that are not run by licensed administrators." *"The last board meeting I viewed on line did not address this issue to any extent."*
27. "Too burdensome regulations by ADPH."
28. "If a program is accepted by the Board of Nursing, Board of Examiners of Nursing Home Administrators, Board for Social Workers, etc., it is ridiculous that that CEU would not qualify because the Board of Examiners for Assisted Living Administrators didn't put there precious stamp on it first? This is complete ignorance."
29. "Unlicensed homes. Close down unlicensed homes."
30. "Fair surveys and clearly stated regulations."
31. "One issue is the lack of information provided to hospital case managers and physicians about the limitations of services an assisted living can provide. Also, there is a lack of understanding of the differences between ALF's, SCALF's and SNF's among the medical community."

Question #9

Do you think the Board of Examiners of Assisted Living Administrators and its staff are satisfactorily performing their duties?

37 Yes 04 No 06 Unknown 1 No Opinion

1. "Unknown. The executive director position is shared. I find this to be a conflict of interest in that the same person is hired to conduct mock surveys in facilities. When ADPH sends complaints to the board for investigation, this same person receives that complaint to determine if it has cause. The executive director would have information from the mock survey that may cloud their judgment in determining if the complaint should be presented to the board. This should be a separate person! According to the budget, the board pays this person \$30,000. They also pay rent \$3,500 per month or \$42,000 annually. The board's budget is \$86,000. I have been to that office on at least two occasions. That office space is at best about 8 x 12. How is it ethical to pay \$42,000 for one room? They have supposedly rented the same furniture for a shared person for 5 years now. Could they have not purchased it by now? What did the Education Director (the association's half of the employee use) during this time? There has to be more affordable rent in Montgomery. The financial relationship between the board and association should be investigated. It is not fair that our license fees are so high and it looks to me that the board is funding the association. They get \$72,000 of the total budget. If it's not illegal, it certainly is unethical."

Licensee Questionnaire

2. "No. Just in the last few months they are hard to get answers from."
3. "No. Because they make things as difficult as they can with getting CEU's unless it is what they say. Plus they make the CEU providers jump through hoops over and over when they are already accredited by the above mentioned institutions."

Question #10

Has any member of the Board of Examiners of Assisted Living Administrators or its staff asked for money (other than normal fees), services, or any other thing of value in return for performing a board service for you?

00 Yes 48 No 0 Unknown 0 No Opinion

APPENDICES

Smart Budgeting Reports

State of Alabama		BOARD OF EXAMINERS OF ASSISTED LIVING ADMINISTRATORS			Agency No. 374	
EBO Form No. 4b		FY 2005-2006 SMART OPERATIONS PLAN			Page 1 of 1	
		ACTUAL	BUDGET	BUDGET		
AGENCY	Board of Examiners of Assisted Living Administrators	FY04	FY05	FY06		
PROGRAM	Professional and Occupational Licensing and Regulation Program	\$82,550	\$86,400	\$86,400		
ACTIVITY	Licensing and Regulation of Assisted Living Administrators					
MISSION	To protect the health, safety and welfare of the public by providing and enforcing standards for licensure and regulation on persons who serve, act and practice as assisted living administrators. (Governor's Priorities #4) (Code Sec. 34-2A-1)					
VISION (Optional)	Serve and care for the seniors in Alabama with great leadership and expertise.					
VALUES (Optional)	Excellence, Responsiveness, Integrity, Leadership					
GOAL(S)	To ensure that only qualified persons enter the profession. To maintain essential information on all licensed assisted living administrators in Alabama. Resolve all complaints satisfactorily within a standard amount of time.					
WORKLOAD	Number of applicants for examination will remain unchanged. (no. applications)	75	77	80		
	Number of licensed assisted living administrators will remain unchanged. (no. licensed)	550	550	550		
CRITICAL ISSUES						
Internal	Validate licensure examinations.					
External	Lack of on-line payable voucher efficiencies via the finance department.					
OBJECTIVES						
Spending		\$82,550	\$86,400	\$86,400		
Staffing	Increase staff by adding a part-time assistant (.5 FTE). (No. of FTE staff)	0.0	0.0	0.5		
Efficiency	Cost per licensee (No. of Licensee/Program Cost)	\$149	\$157	\$157		
Quality	Reduce administrative time required to process each initial license by 5%. (initial licenses/hrs.)	0.5	0.5	0.4		
	Reduce administrative time required to process monthly renewal licenses by 10%. (renewal licenses/hrs.)	20.0	16.0	12.8		
STRATEGIES	1. Create an automated system for issuing initial and renewal licenses. 2. Create a link to the licensee database on the BOEALA website for licensed administrators.					

Smart Quarterly Performance Report

Fiscal Year: 2006

Agency: 374 Assisted Living Administrators, Board of Examiners of

Org:

Program: 653 PRO AND OCCU LICENSING AND REG

Activity:

Performance Measures		First Quarter		Second Quarter		Third Quarter		Fourth Quarter		Annual	
Workload/Cost Factor	Performance Indicator	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual
WC1: Number of applications for examination will remain unchanged	No. applications	20	16	20	20	20	19	20	0	80	0
WC2: Number of licensed assisted living administrators will remain unchanged	No. licensed	0	0	0	410 (Active)	0	406	0	0	550	0
Staffing	Performance Indicator	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual
ST1: Increase staff by adding a part-time assistant (.5FTE)	No. of FTE staff	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0	0.5	0
Efficiency	Performance Indicator	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual
EF1: Cost per licensee	No. of Licensee/Program Cost	157	157	157	157	157	157	157	0	0	0
Quality	Performance Indicator	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual
QU1: Reduce administrative time required to process each initial license by 5%	Initial licenses/hrs.	0.4	0.6	0.4	0.4	0.4	0.4	0.4	0	0.4	0
QU2: Reduce administrative time required to process monthly renewal licenses by 10%	Renewal licenses/hrs.	13	13	13	12	13	13	13	0	13	0

Item # Notes

WC2- Notice- reporting "active" licensees for current licensure

2007 SMART Operations Plan

Agency/ Org	374 - Assisted Living Administrators, Board of Examiners of
Organization	-
Program	653 - PRO AND OCCU LICENSING AND REG
Activity	-

Mission	To protect the health, safety and welfare of the public by providing and enforcing standards for licensure and regulation on persons who serve, act and practice as assisted living administrators (Governor's Priorities #4) (Code Sec. 34-2A-1)
Vision	Serve and care for the seniors in Alabama with great leadership and expertise.
Values	Excellence, Responsiveness, Integrity, Leadership

Goals

- G1: To ensure that only qualified persons enter the profession. (GP-4)
 G2: To maintain essential information on all licensed assisted living administrators in Alabama. (GP-4)
 G3: Resolve all complaints satisfactorily within a standard amount of time. (GP-4)

Critical Issues

Internal IC11: Validate licensure examinations (G1)

External EC11: Lack of on-line payable voucher efficiencies via the finance department (G2)

Strategies

- 1). Validate efficacy of administrative exams (IC11)
- 2). Develop internal audit system for record keeping (G2)
- 3). Survey stakeholders (G2)

Workloads							Performance Indicator	
Number of applicants for examination will remain unchanged							80	
FY 07 Projected: 80							FY 07 Target: 60	
FY07 Quarterly Projections:	1 st Qtr:	15	2nd Qtr:	15	3 rd Qtr:	15	4 th Qtr:	15
Number of licensed ALA will remain unchanged							550	
FY 07 Projected: 550							FY 07 Target: 550	
FY07 Quarterly Projections:	1 st Qtr:	50	2nd Qtr:	100	3 rd Qtr:	150	4 th Qtr:	250

Objectives							Performance Indicator		
Staffing	FTE will remain stable- increase from 1.0 to 1.5						No. of FTE staff		
FY 07 Projected: 1.5		FY 07 Target: 1.0							
FY07 Quarterly Projections:	1 st Qtr:	1.0	2nd Qtr:	1.0	3 rd Qtr:	1.0	4 th Qtr:	1.0	
Efficiency	Cost per licensee						No. of Licensee/Program Cost		

2007 SMART Operations Plan

FY 07 Projected: 157			FY 07 Target: 157					
FY07 Quarterly Projections:	1 st Qtr:	157	2nd Qtr:	157	3 rd Qtr:	157	4 th Qtr:	157
Quality	Reduce administrative time required to process monthly renewal license						(renewal licenses/hrs.)	
FY 07 Projected: 14			FY 07 Target: 14					
FY07 Quarterly Projections:	1 st Qtr:	14	2nd Qtr:	14	3 rd Qtr:	14	4 th Qtr:	14
	Reduce administrative time required to process CEU requests and approvals						(CEU requests & approvals/hrs.)	
FY 07 Projected: 0.4			FY 07 Target: 0.4					
FY07 Quarterly Projections:	1 st Qtr:	.4	2nd Qtr:	.4	3 rd Qtr:	.4	4 th Qtr:	.4

2007 SMART Operations Plan

Source of Funds			
Fund Code	Fund Name	Requested FY 07	Budgeted FY 07
1109	Board of Examiners of Assisted Living Administrators	\$86,400	\$86,400
Total of all Funds Listed Above:		\$86,400	\$86,400

CHAPTER 2A. ASSISTED LIVING ADMINISTRATORS.

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this chapter is effective March 1, 2002.

REFERENCES

ADMINISTRATIVE CODE

- 1 Ala. Admin. Code 135-X-14-.01, Board of Examiners of Assisted Living Administrators; Effective Date of Rules and Regulations.
- 10 Ala. Admin. Code 410-2-4-.04, State Health Planning and Development Agency; Facilities: Limited Care Facilities, Specialty Care Assisted Living Facilities.

§ 34-2A-1. Definitions. Historical Notes References

For purposes of this chapter, the following terms shall have the following meanings:

(1) Assisted living administrator. Any individual who is charged with the general administration of an assisted living facility or a speciality care assisted living facility, whether or not the individual has an ownership interest in the facility, and whether or not his or her functions and duties are shared with one or more other individuals.

(2) Assisted living facility. Any facility, including both assisted living facilities and speciality care assisted living facilities, that is defined as such for licensing purposes pursuant to Section 22-21-20. For purposes of this chapter, the term "assisted living facility" shall not include family assisted living facilities as the term is defined in the rules and regulations promulgated by the Department of Public Health.

(3) Board. The Board of Examiners of Assisted Living Administrators of the State of Alabama.

(4) Executive director. The executive director of the board.

(5) Practice of assisted living administration. The planning, organizing, directing, and control of the operation of an assisted living facility.

(6) Provisional assisted living administrator. An individual who has been issued a provisional license by the board.

(7) Provisional license. A temporary license issued to a provisional assisted living administrator by the board.

(Act 2001-1057, 4th Sp. Sess., p. 1032, § 1; Act 2004-73, p. 90, § 3.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section is effective March 1, 2002.

Amendment notes:

The 2004 amendment, effective April 1, 2004, in subdivision (4) substituted "director" for "secretary", and substituted "director" for "secretary".

REFERENCES

ADMINISTRATIVE CODE

- 1 Ala. Admin. Code 135-X-2-.01, Board of Examiners of Assisted Living Administrators; General Definitions.

§ 34-2A-2. License required; permission to supervise multiple facilities.

Historical Notes References

(a) All administrators of assisted living facilities or specialty care assisted living facilities as recorded in the records of the State Department of Public Health shall be issued a provisional license, as defined herein, upon the effective date of this act. On and after September 1, 2003, no assisted living facility in the state may operate unless it is under the supervision of an administrator who holds a currently valid assisted living administrator's license, or new initial provisional license, issued by the board. No person shall practice or offer to practice assisted living administration in this state or use any title, sign, card, or device to indicate that he or she is an assisted living administrator unless the person shall have been duly licensed as an assisted living administrator or as a provisional assisted living administrator. In the event an assisted living administrator dies, unexpectedly resigns, becomes incapacitated, or has his or her license revoked, the person or persons then responsible for the management of the assisted living facility shall immediately notify the board and the State Board of Health. The board may issue an emergency permit to a person performing the functions of administrator in the assisted living facility for a reasonable period of time from the date of death, unexpected resignation, incapacitation, or revocation of the license of the assisted living administrator, but not to exceed 120 days. Although the State Board of Health, in its discretion, may permit the assisted living facility to continue to operate under the supervision of a person issued an emergency permit, nothing in this section shall be construed as prohibiting the State Board of Health from denying or revoking the license of the assisted living facility where the State Board of Health has determined that the person with the emergency permit does not demonstrate an ability or willingness to comply with State Board of Health rules governing assisted living facilities or where the State Board of Health has determined that the facility is not otherwise in compliance with those rules.

(b) Nothing in this section shall be construed to prohibit a licensed assisted living administrator from supervising more than one assisted living facility if specific permission is granted by the State Department of Public Health.

(Act 2001-1057, § 2.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section is effective March 1, 2002.

REFERENCES

ADMINISTRATIVE CODE

- 1 Ala. Admin. Code 135-X-10-.01, Board of Examiners of Assisted Living Administrators; Issuance of Emergency Permits.

§ 34-2A-3. Board of Examiners of Assisted Living Administrators. Historical Notes References

(a) There is created a Board of Examiners of Assisted Living Administrators composed of nine members, seven members as set out in this subsection, and two additional consumer members as set out in subsection (b). The membership of the board shall be inclusive and reflect the racial, gender, geographic, urban/rural, and economic diversity of the state. The seven original members shall be composed as follows: Five members shall be assisted living administrators duly licensed and registered under this chapter; one member shall be a physician licensed under the laws of the state who is actively concerned in a practice with the care of chronically ill and infirm, aged patients; and one shall be a licensed nursing home administrator who in the same or contiguous facility manages assisted living beds. Appointments to the board for those positions to be held by assisted living administrators shall be made by the Governor from a list of three nominees for each position to be submitted to the Governor by the Assisted Living Association of Alabama, Inc. The appointment of the nursing home administrator shall be made from a list of three nominees submitted to the Governor by the Alabama Nursing Home Association, Inc. The appointment to the board of the member for the position to be held by a physician shall be made from a list of three nominees submitted to the Governor by the Medical Association of the State of Alabama.

(b) Within 30 days of March 1, 2002, the Governor shall appoint two consumer members of the board. The consumer members shall vote in all matters except licensure or discipline of licensees or applicants. At least one consumer member shall be 65 years of age or older and no consumer member, or a spouse or immediate family member of a consumer member, shall be a licensee of the board or be employed in the assisted living profession.

(c) When the terms of all members of the board expire in April 2005, the Governor shall appoint five members to two-year terms and four members to three-year terms as follows: Three assisted living administrators, the licensed nursing home administrator, and one consumer member shall be appointed to two-year terms; two assisted living administrators, the licensed physician, and one consumer member shall be appointed to three-year terms. Thereafter, all members shall serve three-year terms of office.

(d) All members of the board shall be citizens of the United States and shall be residents of the state.

(e) Except as otherwise provided in this section, each member shall serve three-year staggered terms and no board member shall serve more than two consecutive full three-year terms. All members shall continue to serve until the Governor appoints a successor.

(f) The Governor may remove any board member for misconduct, incapacity, incompetence, or neglect of duty after the board member so charged has been served with a written statement of charges and has been given an opportunity to be heard. Absence from any three consecutive meetings of the board within a calendar year, without cause acceptable to the Governor and the board, shall be deemed cause for removal.

(g) Any vacancy created by the death, resignation, or removal of any board member shall be filled by the Governor for the unexpired term in the same manner as required by this chapter to make appointments.

(h) Each member of the board shall receive a per diem fee of not less than fifty dollars (\$50) nor more than one hundred dollars (\$100) to be determined by the board for the time spent in the performance of official duties. Each member shall be reimbursed for all necessary and proper travel and incidental expenses incurred in implementing this chapter as is provided to state employees by the laws of the state and regulations of the State Personnel Director. In setting the per diem fee, the board shall give due consideration to funds which are available for that purpose.

(i) The board shall hold four or more meetings a year. A majority of the members of the board shall constitute a quorum at any meeting except as provided in Section 34-2A-13. A majority vote of the members present shall be sufficient to transact the business of the board except as provided in Section 34-2A-13. Meetings may be called by the chair or by a majority of the members of the board. Members shall be given seven days' written notice of all meetings.

(j) The board shall annually elect from its members a chair and a vice-chair, at the first meeting of the board held after October 1 of each year, and each shall serve until the first meeting held after October 1 of the following year. In the event of the death, resignation, or removal of the chair from the board, the vice-chair shall succeed as chair for the remainder of the unexpired term. In the event of the death, resignation, removal, or succession to the office of chair of a vice-chair, a successor shall be elected by the board to fill the remainder of the unexpired term as vice-chair. The chair, or in the absence of the chair, the vice-chair, shall preside at all meetings of the board. The chair of the board may appoint an executive director to the board, with the consent of the members of the board, who shall serve at the pleasure of the board. The board shall fix the salary of the executive director. The executive director shall be the executive officer to the board but may not be a member of the board. The executive director shall have those powers and shall perform those duties as are prescribed by law and the rules and regulations of the board. A clerk and sufficient deputy clerks to adequately assist the board and executive director in the keeping of the records and in the performance of their duties may be appointed by the board subject to the Merit System.

(k) The board is subject to the Alabama Sunset Law of 1981, and is classified as an enumerated agency pursuant to Section 41-20-3. The board shall automatically terminate on October 1, 2004, and every four years thereafter, unless a bill is passed that the board be continued, modified, or reestablished.

(Act 2001-1057, 4th Sp. Sess., p. 1032, § 3; Act 2004-73, p. 90, § 3.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section is effective March 1, 2002.

Amendment notes:

The 2004 amendment, effective April 1, 2004, in subsection (a) deleted "hereby" following "There is"; redesignated subsections (c) through (j) as subsections (d) through (k), respectively; inserted subsection (c); in subsection (e), as so redesignated, substituted "Except as otherwise provided in this section, each" for "Each", and substituted "three-year staggered terms" for "a three-year term"; and in subsection (j), as so redesignated, substituted "director" for "secretary" in four places, and substituted "salary of the executive director" for "executive secretary's salary".

Code Commissioner's Notes

Act 2004-73, § 2 provides: "The existence and functioning of the Board of Examiners of Assisted Living Administrators, created and functioning pursuant to Sections 34-2A-1 to 34-2A-16, inclusive, Code of Alabama 1975, is continued, and those code sections are expressly preserved."

REFERENCES

ADMINISTRATIVE CODE

- 1 Ala. Admin. Code 135-X-3-.01, Board of Examiners of Assisted Living Administrators; Meetings of the Board.

§ 34-2A-4. Powers and duties of board. Historical Notes References

(a) It shall be the function and duty of the board to perform the following:

(1) Develop, impose, and enforce standards which shall be met by individuals in order to receive a license as an assisted living administrator, which standards shall be designed to insure that assisted living administrators will be individuals who are of good character and are otherwise suitable and who, by training or experience in the field of institutional administration, are qualified to serve as assisted living administrators.

(2) Develop and apply appropriate techniques, including examinations and investigations, for determining whether an individual meets these standards.

(3) Issue licenses to individuals determined, after application of the techniques, to meet these standards and revoke or suspend licenses previously issued by the board in any case where the individual holding any license is determined substantially to have failed to conform to the requirements of these standards.

(4) Receive, investigate, and take appropriate action with respect to any charge or complaint filed with the board to the effect that any individual licensed as an assisted living administrator has failed to comply with the requirements of these standards.

(5) Establish and carry out procedures designed to insure that individuals licensed as assisted living administrators will, during any period that they serve as such,

comply with the requirements of these standards.

(6) Conduct a continuing study and investigation of assisted living facilities and administrators of assisted living facilities within the state with a view to the improvement of the standards imposed for the licensing of these administrators and of procedures and methods for the enforcement of these standards with respect to administrators of assisted living facilities who have been licensed as such.

(b) The board may develop, impose, and enforce additional standards which shall be met by individuals in order to receive additional certification and/or license as a specialty care assisted living administrator, which standards shall be designed to insure that specialty care assisted living administrators will be individuals who are of good character and are otherwise suitable and who, by training or experience in the field of institutional administration, are qualified to serve as assisted living administrators.

(c) The board shall have the authority to perform the following:

(1) Make rules and regulations, not inconsistent with law, as may be necessary for the proper performance of its duties, and to take other actions as may be necessary for the proper performance of its duties.

(2) Establish, provide, or approve various education programs or courses for assisted living administrators, and prescribe rules and regulations requiring applicants for licenses as assisted living administrators to attend certain programs or courses as a prerequisite to their being admitted to the examination or issued a license and requiring licensed assisted living administrators to attend these programs or courses as a prerequisite to their being issued any license renewal.

(Act 2001-1057, § 4.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section is effective March 1, 2002.

REFERENCES

ADMINISTRATIVE CODE

- 1 Ala. Admin. Code 135-X-4-.01, Board of Examiners of Assisted Living Administrators; General Powers of the Board.
- 1 Ala. Admin. Code 135-X-11-.01, Board of Examiners of Assisted Living Administrators; Required Personal and Business Information.

§ 34-2A-5. Rule-making. Historical Notes

The Alabama Administrative Procedure Act shall govern all rule-making proceedings of the board.

(Act 2001-1057, 4th Sp. Sess., p. 1032, § 5.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section is effective March 1, 2002.

§ 34-2A-6. Board of Examiners of Assisted Living Administrators Fund.

Historical Notes

There is hereby established a separate special revenue trust fund in the State Treasury to be known as the Board of Examiners of Assisted Living Administrators Fund. All receipts collected by the board under the provisions of this chapter shall be deposited into this fund and shall be used only to carry out the provisions of this chapter. Receipts may be disbursed only by warrant of the state Comptroller upon the State Treasury, upon itemized vouchers approved by the chair of the board. No funds may be withdrawn or expended except as budgeted and allotted according to Sections 41-4-80 to 41-4-98, inclusive, and Section 41-19-12, and only in amounts as stipulated in the general appropriation bill or other appropriation bills. A financial audit shall be conducted by the Examiners of Public Accounts of all receipts and expenditures, and a written report of the audit shall be given to each board member.

(Act 2001-1057, 4th Sp. Sess., p. 1032, § 6.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section is effective March 1, 2002.

§ 34-2A-7. Advisory council. Historical Notes

The governing body of the Assisted Living Association of Alabama, Inc., shall constitute an advisory council to the board, and the board shall be required to counsel with the advisory council in connection with the administration of this chapter.

(Act 2001-1057, 4th Sp. Sess., p. 1032, § 7.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section is effective March 1, 2002.

§ 34-2A-8. Requirements for examination; fees. Historical Notes References

(a) The board shall admit to examination for licensure as an assisted living administrator any candidate who submits evidence of good moral character and suitability as prescribed by the board and who submits evidence to the board that he or she is at least 19 years of age, a citizen of the United States, or that he or she has duly

declared his or her intention of becoming a citizen of the United States, that he or she is a high school graduate or has completed an educational program equivalent thereto, and that he or she has completed any additional educational requirements prescribed by the board. The board may exempt the educational requirements for practicing administrators on March 1, 2002, based on acceptable experience and tenure in the applicant's current position. Each candidate shall also be required, prior to admission to the examination, to pay an examination fee established by the board pursuant to its rule-making authority.

(b) The board may establish an application fee for the internship or administrator in training (AIT) program, if such a program is established, and a fee for preceptor, certification, and recertification of any administrator in training (AIT) program pursuant to its rule-making authority.

(Act 2001-1057, § 8.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section is effective March 1, 2002.

REFERENCES

ADMINISTRATIVE CODE

1 Ala. Admin. Code 135-X-5-01 et seq., Board of Examiners of Assisted Living Administrators; Examination Information.

1 Ala. Admin. Code 135-X-13-.01, Board of Examiners of Assisted Living Administrators; Fees.

§ 34-2A-9. Examination. Historical Notes References

(a) The board shall determine the subjects of examinations for applicants for licensure as assisted living administrators, or licensure or certification of specialty care assisted living administrators if established, and the scope, content, and format of the examinations, which in any examination shall be the same for all candidates. The examinations shall include examination of the applicant to demonstrate his or her proficiency in the rules and regulations of health and safety; provided, however, that the examination given to initial provisional licensees shall be limited to these rules and regulations. The examinations may consist of written or oral questions, or both.

(b) Examinations shall be held at least four times each year, at times and places designated by the board.

(Act 2001-1057, § 9.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section is effective March 1, 2002.

REFERENCES

ADMINISTRATIVE CODE

- 1 Ala. Admin. Code 135-X-5-01 et seq., Board of Examiners of Assisted Living Administrators; Examination Information.

§ 34-2A-10. Issuance of license. Historical Notes References

(a) The board shall issue a license to an applicant, on a form provided for that purpose by the board, certifying that the applicant has met the requirements of the laws, rules, and regulations entitling him or her to serve, act, practice, and otherwise hold himself or herself out as a duly licensed assisted living administrator and has paid a fee established by the board pursuant to its rule-making authority for original licensure, provided the applicant meets all of the following qualifications:

(1) Has successfully complied with the educational and training requirements of this chapter and of the rules and regulations of the board promulgated under this chapter.

(2) Has paid an application fee established by the board pursuant to its rule-making authority for all applicants.

(3) Has qualified for and passed the examination provided for in this chapter.

(b) The board may establish and collect a fee pursuant to its rule-making authority for the issuance of a temporary emergency permit issued pursuant to Section 34-2A-2.

(Act 2001-1057, 4th Sp. Sess., p. 1032, § 10.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section is effective March 1, 2002.

REFERENCES

ADMINISTRATIVE CODE

- 1 Ala. Admin. Code 135-X-7-.01, Board of Examiners of Assisted Living Administrators; License Information.
- 1 Ala. Admin. Code 135-X-13-.01, Board of Examiners of Assisted Living Administrators; Fees.
- 1 Ala. Admin. Code 135-X-9-.01, Board of Examiners of Assisted Living Administrators; Non-Disciplinary Refusal of License.

§ 34-2A-11. Administrators licensed in other state; licensed nursing home administrators; acute care hospital administrators, etc. Historical Notes References

(a) The board may, subject to this chapter and the rules and regulations of the board prescribing the qualifications for an assisted living administrator license, issue a license

to an assisted living administrator who has been issued a license by the proper authorities of any other state or issued a certificate of qualification by any national organization, upon complying with the provisions of licensure, payment of a fee established by the board pursuant to its rule-making authority, and upon submission of evidence satisfactory to the board of all of the following:

(1) That the other state or national organization maintained a system and standards of qualification and examinations for an assisted living administrator license or certificate which were substantially equivalent to those required in this state at the time the other license or certificate was issued by the other state or national organization.

(2) That the other state gives similar recognition and endorsement to assisted living administrator licenses of this state. The board may charge a fee for completion of a reciprocity questionnaire, pursuant to its rule-making authority.

(b) Any person who has a license in good standing, and continuously maintains such license as a licensed nursing home administrator, shall be exempt from the licensure requirement herein if the person at the time of application has responsibility for administration of an assisted living facility subject to the following conditions:

(1) If the person wishes to also be issued a license as an assisted living administrator, the person shall pay an administrative fee as determined by the board and document initially and annually thereafter the good standing of the nursing home administrator license.

(2) If any person requests an exemption from the licensure requirements provided herein during the initial 18-month licensing period described in subsection (a) of Section 34-2A-2, the initial license issued shall be a provisional license until the end of the 18-month period at which time, and thereafter, an active license shall be issued.

(3) Any assisted living administrator license issued according to subdivision (1) or subdivision (2) of this subsection shall become void if the requisite nursing home administrator license becomes void. Further, the license shall become inactive, as described in subsection (e) of Section 34-2A-12, if the licensee no longer has responsibility for an assisted living facility. After 12 months in inactive status, the license shall expire and become void.

(c) Any person who is an administrator/chief executive officer of an acute care hospital shall be exempt from the licensure requirement herein if the person at the time of application has responsibility for administration of an assisted living facility subject to the following conditions:

(1) If the person wishes to also be issued a license as an assisted living administrator, the person shall pay an administrative fee as determined by the board and document initially and annually thereafter their continued employment as an administrator/chief executive officer of an acute care hospital.

(2) If any person requests an exemption from the licensure requirements provided herein during the initial 18-month licensing period described in subsection (a) of Section 34-2A-2, the initial license issued shall be a provisional license until the end of the 18-month period at which time, and thereafter, an active license shall be issued.

(3) Any assisted living administrator license issued according to subdivision (1) or subdivision (2) of this subsection shall become void if the person no longer is the administrator/chief executive officer of a hospital. Further, the license shall become

inactive, as described in subsection (e) of Section 34-2A-12, if the licensee no longer has responsibility for an assisted living facility. After 12 months in inactive status, the license shall expire and become void.

(4) For the purpose of this subsection, the term "acute care hospital" shall be defined as a health institution planned, organized, and maintained for offering to the public generally facilities and beds for use in the diagnosis and/or treatment of illness, disease, injury, deformity, abnormality, or pregnancy, when the institution offers such care of service for not less than 24 consecutive hours in any week to two or more individuals not related by blood or marriage to the owner and/or chief executive officer/administrator, and, in addition, the hospital may provide for the education of patients, medical and health personnel, as well as conduct research programs to promote progress and efficiency in clinical and administrative medicine.

(Act 2001-1057, 4th Sp. Sess., p. 1032, § 11.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section is effective March 1, 2002.

Code Commissioner's Notes

In 2002, the Code Commissioner in subsection (a) inserted "board of all of the following" for "board all of the following" to correct a typographical error; in subdivision (2) of subsection (b) inserted "thereafter, an active license shall be issued" for "thereafter, shall an active license be issued" to correct a grammatical error; and after the third sentence in subdivision (3) of subsection (c) inserted (4) to create a new subdivision.

REFERENCES

ADMINISTRATIVE CODE

- 1 Ala. Admin. Code 135-X-12-.01, Board of Examiners of Assisted Living Administrators; Reciprocal Licensure.
- 1 Ala. Admin. Code 135-X-13-.01, Board of Examiners of Assisted Living Administrators; Fees.

§ 34-2A-12. Renewal, expiration of license; inactive status; maintenance of records; continuing education. Historical Notes References

(a) Every individual who holds a valid current license as an assisted living administrator issued by the board under this chapter shall immediately upon issuance have the right and privilege of acting and serving as an assisted living administrator and of using the abbreviation "A.L.A." after his or her name. Thereafter, the individual shall annually be required to make application to the board for a renewal of license and to report any facts requested by the board on forms provided for that purpose.

(b) Upon making application for a renewal of a license, the individual shall pay an annual license fee established as determined by the board pursuant to the rule-making authority and, at the same time, shall submit evidence satisfactory to the board that during the year immediately preceding application for renewal he or she has complied with the requirements of the board concerning the continuation of education of assisted living administrators.

(c) Upon receipt of the application for renewal of a license, the renewal fee, and the evidence with respect to continuing education, the board shall issue a license renewal to the assisted living administrator.

(d)(1) Failure to secure an annual renewal of a license based on a failure to meet the continuing education requirements shall result in the expiration of the license. An expired license may not be reactivated. All persons holding an expired license shall be required to submit a new application and follow all procedures for licensure of a new applicant.

(2) A licensee who complies with the continuing education requirements, but who does not renew within 90 days following its due date, shall be deemed delinquent and may renew within the 90-day period by paying a late renewal fee established by the board pursuant to its rule-making authority. A license that is not renewed within the 90-day period shall be deemed expired and is subject to reapplication as provided in subdivision (1).

(e) A licensee who holds a current license and who is not practicing as an assisted living administrator may place that license into an inactive status upon written application to the board. Any licensee whose license has been placed on inactive status may not engage in the practice of assisted living administration.

(f) A licensee whose license is on inactive status who wishes to reactivate that license may do so by making application to the board. The applicant shall attach proof of having completed twice the annual hours' requirement of approved continuing education credits within one year of making application for license reactivation and shall pay a reactivation fee established by the board pursuant to its rule-making authority. A licensee may not have his or her license in inactive status for more than five years. After five years in inactive status, the license automatically expires.

(g) The board shall maintain a file of all applications for licensure that includes the following information on each applicant: Residence, name, age, the name and address of his or her employer or business connection, the date of application, educational experience qualifications, action taken by the board, serial numbers of licenses issued to the applicant, and the date on which the board acted on or reviewed the application.

(h) The board shall maintain a list of current licensees of the board and shall furnish the list on demand to any person who pays a fee established by the board pursuant to its rule-making authority. The State Department of Public Health and other state agencies with a direct need shall be provided copies at no cost.

(i) The board shall adopt a program for continuing education for its licensees by September 1, 2002. After that date, successful completion of the continuing education program by board licensees shall be required in order to obtain a renewal license.

(j) Continuing education shall not result in a passing or failing grade.
(Act 2001-1057, 4th Sp. Sess., p. 1032, § 12.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section is effective March 1, 2002.

Code Commissioner's Notes

In 2002, the Code Commissioner in the first sentence of subdivision (2) of subsection (d) inserted "renew within 90 days following" for "renew within days following" to correct a typographical error.

REFERENCES

ADMINISTRATIVE CODE

- 1 Ala. Admin. Code 135-X-13-.01, Board of Examiners of Assisted Living Administrators; Fees.
- 1A Ala. Admin. Code 80-1-22-.36, Department of Agriculture and Industries; Foods, Drugs and Cosmetics: Prohibitions and Exemptions for Altering Open-Date Statements.
- 1A Ala. Admin. Code 80-1-22-.36, Department of Agriculture and Industries; Foods, Drugs and Cosmetics: Prohibitions and Exemptions for Altering Open-Date Statements.
- 1 Ala. Admin. Code 135-X-6-.01, Board of Examiners of Assisted Living Administrators; Continuing Education.

§ 34-2A-13. Disciplinary actions; review. Historical Notes References

(a) The board may discipline its licensees by the adoption and collection of administrative fines, not to exceed one thousand dollars (\$1,000) per violation, and may institute any legal proceedings necessary to effect compliance with this chapter.

(b) The license of any person practicing or offering to practice assisted living administration may be revoked or suspended by the board, or the person may be reprimanded, censured, or otherwise disciplined in accordance with the provisions of this section upon decision and after due hearing in any of, but not limited to, the following cases:

(1) Upon proof that the person has willfully or repeatedly violated any of the provisions of this chapter or the rules enacted in accordance with this chapter.

(2) Conduct or practices deemed to be detrimental to the lives, health, safety, or welfare of the residents or patients of any assisted living facility or health care facility in this state or any other jurisdiction.

(3) Conviction in this state or any other jurisdiction of a felony or any crime involving the physical, sexual, mental, or verbal abuse of an individual.

(4) Conviction in this state or any other jurisdiction of any crime involving fraud.

(c) The board shall have the jurisdiction to hear all charges brought under this section against any person having been issued a license as an assisted living administrator or having been issued a license as a provisional assisted living administrator and, upon a hearing, shall determine the charges upon their merits. If the board determines that disciplinary measures should be taken, the board may revoke his or her license, suspend

him or her from practice, or reprimand, censure, or otherwise discipline the person.

(d) All proceedings under this section shall be conducted by the board, according to its administrative rules, and the Alabama Administrative Procedure Act.

(e) Any party aggrieved by a final decision or order of the board suspending, revoking, or refusing to issue a license is entitled to a review of the decision or order by taking an appeal to the circuit court of the county in which the assisted living administrator or applicant resides. In such cases, the appeal shall be taken by filing notice thereof with the circuit court within 30 days of the date of notice by the board of its decision. Appeals from any order or judgment rendered thereon by the circuit court to the Supreme Court of Alabama shall be available as in other cases.

(f) The board shall report to the Department of Public Health all final disciplinary actions taken under this section.

(Act 2001-1057, § 13.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section is effective March 1, 2002.

REFERENCES

ADMINISTRATIVE CODE

- 1 Ala. Admin. Code 135-X-8-.01, Board of Examiners of Assisted Living Administrators; Complaints and Inquiry Procedures.
- 1 Ala. Admin. Code 135-X-7-.02, Board of Examiners of Assisted Living Administrators; Refusal, Suspension, Revocation of License, and Disciplinary Proceedings.

§ 34-2A-14. Reissuance of license. Historical Notes

The board may, for good cause shown upon such terms as the board may prescribe, reissue a license to any person whose license has been revoked.

(Act 2001-1057, § 14.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section is effective March 1, 2002.

§ 34-2A-15. Violations. Historical Notes References

(a) It shall be a misdemeanor for any person to commit any of the following:

(1) Sell or fraudulently obtain or furnish any license or aid or abet in selling or fraudulently obtaining or furnishing any license.

(2) Practice as an assisted living administrator under cover of any license illegally

or fraudulently obtained or unlawfully issued.

(3) Practice as an assisted living administrator or use in connection with his or her name any designation tending to imply that he or she is an assisted living administrator unless duly licensed to so practice under this chapter.

(4) Practice as an assisted living administrator or use in connection with his or her name any designation tending to imply that he or she is an assisted living administrator during the time his or her license issued under this chapter shall be expired, suspended, or revoked.

(5) Otherwise violate any of the provisions of this chapter.

(b) A violation of this chapter shall be a Class C misdemeanor punishable as provided by law.

(Act 2001-1057, § 15.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section is effective March 1, 2002.

REFERENCES

ADMINISTRATIVE CODE

- 1 Ala. Admin. Code 135-X-7-.03, Board of Examiners of Assisted Living Administrators; Prohibited Acts: Penalties.

§ 34-2A-16. Construction of chapter. Historical Notes

Nothing in this chapter shall be construed so as to limit, conflict with, or diminish the authority granted to the State Board of Public Health to license and regulate assisted living facilities pursuant to Chapter 21 of Title 22. The board may not set any requirement, promulgate any rule, or take any action in conflict with the rules of the State Board of Public Health.

(Act 2001-1057, § 16.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section is effective March 1, 2002.

Board Members

JUN 20/2007 WED 09:40 AM

AssistedLivingAssoc

FAX No. 334 262 4603

P. 001



State of Alabama Board of Examiners of Assisted Living Administrators

5921 Carmichael Road
Montgomery, Alabama 36117
www.boeala.state.al.us

Amy Findley
Executive Director

Telephone: (334) 262-6719
Fax: (334) 819-8715

To: Tony Yarbrough (via fax: 353-1331)
From: Amy Findley
Date: June 20, 2007
Re: Board Member List

Per your request this morning, here is a list of my current Board Members home address, appointment and expiration date.

Assisted Living Administrator Representatives:

Rita VanDyke
136 McKnight Street
Florence, AL 35630
Appointed: June 12, 2007
Term: April 18, 2010

Mamie Mahone, Chair
302 Joye Lane
Alabaster, AL 35007
Appointed: April 19, 2002
Term: April 18, 2008

Jimmy Law
208 Hampton Avenue
Troy, AL 36081
Appointed: June 12, 2007
Term: April 18, 2010

Merlinda Nettles
2305 Anclote Court
Mobile, AL 36695
Appointed: June 12, 2007
Term: April 18, 2010

Kathy Tankersley
52 County Road 1275
Cullman, AL 35057
Appointed: April 19, 2002
Term: April 18, 2008

Nursing Home Administrator Representative:

David Wilbanks
2519 Overhill Road
Sylacauga, AL 35150
Appointed: August 1, 2005
Term: April 18, 2007

Physician Representatives:

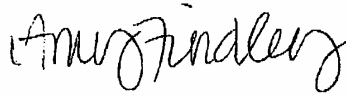
Vacant

Consumer Representatives:

Tom McKinnon
9336 Sturbridge Place
Montgomery, AL 36116
Appointed: June 12, 2007
Term: April 18, 2010

George Smith
314 Vesclub Drive
Vestavia Hills, AL 35216
Appointed: June 12, 2007
Term: April 18, 2010

Executive Director
Amy Findley
5921 Carmichael Road
Montgomery, AL 36117



Agency Response to Significant Items



**State of Alabama Board of Examiners of
Assisted Living Administrators**

5921 Carmichael Road
Montgomery, Alabama 36117
www.boeala.state.al.us

Amy Findley
Executive Director
amy.findley@boeala.alabama.gov

Telephone: (334) 262-6719
Fax: (334) 819-8715

August 8, 2007

Mr. John E. Norris
Director, Operational Division
State of Alabama Examiners of Public Accounts
P.O. Box 302251
Montgomery, Alabama 36130-2251

**Re: Response to Significant Items,
Board of Examiners, ALA**

Dear Mr. Norris:

The Board of Examiners for Assisted Living Administrators is in receipt of your letter dated July 18, 2007, and requesting a response to your Sunset Committee. Although the Board disagrees with the representations you allege as fact in the majority of your significant findings, we do fully respect your authority and wish to do all within the power of this board to address all of your concerns.

This response was prepared with the full and complete cooperation and foreknowledge of the Board of Examiners for Assisted Living Administrators, excluding the input of those members who have finally rotated off the Board. It is no stretch, indeed no shame either, to position that this Board of volunteers has little experience in operating a Licensing Board, much less navigating the labyrinth of various State Department's and Administrative Code's that govern its operations. Nevertheless; please accept our responses to your Significant Findings as presented below, and our assurance that we intend through our future actions to be fully compliant with any regulation governing our continued operations.

Sincerely,

Amy Findley
Executive Director

SIGNIFICANT FINDINGS

1. The board did not register board information with the Secretary of State's Office, as required by law. The Code of Alabama 1975, Section 36-14-17 requires that "by December 4, 2006, the chair of an existing board or the appointing authority for a newly created board shall provide the Secretary of State . . . the name of the board, its mailing address, telephone number, and email address; the name of each appointee to the board; the date of appointment, term of appointment, and expiration date of the term of appointment of each appointee; and the name and position of the appointing authority of each appointee." Although the executive director was informed of this discrepancy in January 2007, as of June 8, 2007 the information remained unposted.

The underlying conclusion of this finding is accurate. After our BOE Chair was made aware of her responsibility to post this material it was posted on 07/24/07. Armed with this knowledge we will continue to post the information on a timely basis as required by the Code.

2. Notice of a board meeting held January 11, 2006 was not posted on the Secretary of State's Internet website, as required by Alabama's Open Meetings Act. In addition, although a notice posted on the Secretary of State's Internet website indicates a meeting on November 14, 2006, minutes of the November meeting record the actual date of the meeting as November 21, 2006. Inaccurate posting of notices could cause persons interested in attending board meeting to miss meetings. Under the Open Meetings Act of 2005 as codified in the Code of Alabama 1975, Section 36-25A-3(a)(2), "Any governmental body with statewide jurisdiction shall submit notice of its meeting to the Secretary of State."

This finding is accurate and the facts are not in dispute. The previous Executive Director did indeed fail to post and inaccurately post Notice of meetings as required. A new Executive Director who has experience in the operations of Associations was hired on May 14, 2007. To combat the reoccurrence of this issue the BOE has implemented the following actions:

- *A monthly & quarterly task list (which lists required tasks such as this) has been developed by the current E.D. Effective 8/1/07, the E.D. will submit to the chair a Monthly Activity Report in order to better supervise and guide this position from our remote locations.*
- *The Board's Education committee and Rules committee are currently in the process of developing a training manual and policy manual so as to provide better direction to new staff members in the future.*

3. The board improperly granted a provisional license to an applicant who marked on her application that she had been convicted of a felony.

The board was not able to provide records of its actions to resolve the issue. During the application review process performed by the board, the board failed to request from the applicant mandatory information required by Administrative Rule 135-X-5-.03(3) which states that, "An applicant for examination who has been convicted of a felony by any court in this state . . . shall not be admitted to or be permitted to take the examination unless he/she shall first submit to and file with the board, a certificate of good conduct granted by the Board of Parole or, . . . an equivalent written statement or document".

During the November 21, 2006 board meeting, the board received notice from the Alabama Department of Public Health (ADPH) of this condition. During an audit/survey of an assisted living facility ADPH found that the administrator's provisional license had been approved by the board although she had indicated a felony conviction on her application. In response, the board approved revising applications to include text from its administrative Rule 135-X-5-.03(3) concerning felony convictions.

Records show that the board notified the licensee of the issue in a letter dated December 21, 2006 and the licensee was asked to supply the board with information concerning the felony conviction(s).

Additionally, the letter states that the board had received information suggesting that additional criminal charges and/or convictions may have occurred since her application was filed that could affect her provisional license. The letter indicates that the board had convened a Probable Cause Committee to determine if probable cause existed to pursue disciplinary action. The licensee was granted 30 days to submit an explanation and any relevant documentation regarding the allegations. The letter also states that the Probable Cause Committee would vote whether to file a formal complaint against her license after January 24, 2007.

The executive director stated that the provisional license expired July 11, 2007, but had been surrendered earlier at the request of the board's legal counsel. However, the board was not able to provide records to indicate the formation of a Probable Cause Committee, receipt of any documentation from the licensee or any action by the board to resolve the situation.

Again; the conclusion of this finding is accurate. The BOE did unknowingly license an applicant who noted on her application the presence of a felony conviction. In the future to safeguard against the re-occurrence of a like-kind situation the BOE has placed into effect the following actions:

- ***On or before 7/27/07 the Board completed an audit of ALL new and renewal license applications. No negative findings were identified as a result of this audit.***
- ***During each quarterly Board meeting, the Board members will review new and renewal applications received since the last Board meeting for discrepancies, material misstatements, or errors.***
- ***A checklist which highlights key aspects of new and renewal applications was developed for the Executive Director to use for audit license***

applications. This was approved by the Board 1/11/07 and was immediately implemented thereafter.

The auditor's findings indicate the Board took no action to resolve the situation in question, however, the auditor's own "Significant Findings" references statements and actions of the Board from a letter sent to the applicant in question. More specifically, Tony Yarbrough stated:

"Records show that the board notified the licensee of the issue in a letter dated December 21, 2006 and the licensee was asked to supply the board with information concerning the felony conviction(s). Additionally, the letter states that the board had received information suggesting that additional criminal charges and/or convictions may have occurred since her application was filed that could affect her provisional license. The letter indicates that the board had convened a Probable Cause Committee to determine if probable cause existed to pursue disciplinary action. The licensee was granted 30 days to submit an explanation and any relevant documentation regarding the allegations. The letter also states that the Probable Cause Committee would vote whether to file a formal complaint against her license after January 24, 2007."

Further, the applicant assured Board Counsel (said Counsel being well aware of this situation and the author of the Board's response to the applicant,) on two separate occasions that she had mailed and faxed the consent agreement surrendering her provisional license. When Board Counsel did not receive the consent, the Board decided to go forward with a hearing to revoke the applicant's provisional license. However, the applicant's provisional license expired during this period of communication.

4. The board leases office space from the Assisted Living Association for \$264 per square foot, a very high rate compared to other office space in the area leased by state entities. Prior to a decrease to \$264 per square foot that occurred on May 1, 2007 the board was leasing the space for \$420 per square foot. According to the Examiners of Public Accounts publication, Real Property Leased from Private Entities as of October 1, 2006, the average cost per square foot for office space in Montgomery is \$9.92. The board's lease includes a 10' x 10' furnished office including a computer and common space shared with the Assisted Living Association that includes a receptionist area and conference room.

This condition is a matter of concern to two of the three board members who responded to our questionnaire. One board member responded, "We have attempted to hire an independent executive director at the advice of the AG's Office due to conflict of Probable Cause Committee. We are getting pressure from the A.L.A.A., the board's advisor, not to follow instructions because according to them, we cannot afford it. We could if we didn't pay \$40,000 rent for office space in their office. We asked for lower rent. They agreed to 90 days "abatement." I believe that this lease did not clear office of lease Management and is unreasonable. The ALAA constantly tries to tell the board how to govern instead of advise. We are at a deficit because of rent!"



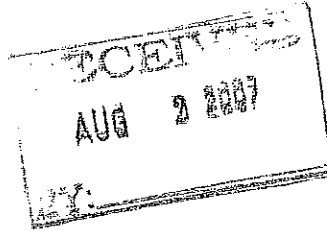
**State of Alabama Board of Examiners of
Assisted Living Administrators**

5921 Carmichael Road
Montgomery, Alabama 36117
www.boeala.state.al.us

Amy Findley
Executive Director
amy.findley@boeala.alabama.gov

Telephone: (334) 262-6719
Fax: (334) 819-8715

June 7, 2007



Mr. Jim Yoder
Office of Space Management
State of Alabama
11 South Union Street
Montgomery, Alabama 36130

Dear Mr. Yoder:

The Alabama Board of Examiners of Assisted Living Administrators has been reviewing its Lease Agreement in an effort to conform to the Office of Space Management guidelines. The ABOEALA has had an agreement in place since being established by law in 2003. The agreement is with the Assisted Living Association of Alabama, Inc. which is directed by the statute to act as an "Advisory Board" to the ABOEALA.

As required by law, the Board is entirely self-sustaining through its licensing fees and does not require any funds from the Alabama General Fund budget.

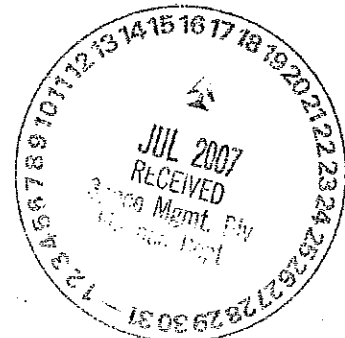
The annual rental for a furnished private Executive Office, use of Board Room, and Reception area is \$14,360 or \$1,196.67 per month. Adequate free parking space, access to break area, and rest rooms are included.

The attached is our proposed lease agreement. Please review and advise. We are currently without an approved lease agreement. We would appreciate an expedited approval. Thank you for your assistance in this matter.

Please contact me with any further questions or advice on this document.

Sincerely,

Amy Findley
Executive Director



**STATE OF ALABAMA
GOVERNMENTAL REAL ESTATE LEASE**

STATE OF ALABAMA

COUNTY OF MONTGOMERY

STATE AGENCY OR DEPARTMENT:
BOARD OF EXAMINERS OF ASSISTED LIVING ADMINISTRATORS

PARTIES

THIS LEASE IS MADE THIS 1ST Day of APRIL 2007, by and between the Owner, individual, partnership, or corporation whose name is ASSISTED LIVING ASSOCIATION OF ALABAMA, INC, hereinafter called LESSOR, AND _BOARD OF EXAMINERS OF ASSISTED LIVING ADMINISTRATORS an agency, institution, department of the State of Alabama hereinafter called AGENCY.

TERMS OF LEASE

This lease shall begin on the 1ST day of APRIL, 2007, and end on midnight on the 31ST day of MARCH, 2009.

LOCATION

This lease covers the demised premises located in MONTGOMERY County, in the city of MONTGOMERY, at 5921 CARMICHAEL ROAD.. The demised premises contains:

- (A) 115 +/- SQUARE FEET OF PRIVATE, FURNISHED, AND EQUIPTED EXECUTIVE OFFICE SPACE;
- (B) 490 +/- SQUARE FEET OF SHARED FURNISHED BOARD MEETING SPACE WITH A/V EQUIPMENT;
- (C) APPROXIMATELY 256 +/- SQUARE FEET OF SHARED FURNISHED RECEPTION AREA;

(D) DEDICATED FACSIMILE, COMPUTER, TELEPHONE EQUIPMENT, LOCAL AND LONG DISTANCE TELEPHONE SERVICE, AND

(F) HIGH SPEED INTERNET CONNECTION.

THE ABOVE IS LEASED AT a price of \$ _115 SQUARE FEET A T \$60 PER FOOT (WITH ENUMERATED EQUIPMENT, FURNISHINGS AND SERVICES); 256 SQUARE FEET AT 50% USAGE AT \$20 PER SQUARE FOOT; AND, 490 SQUARE FEET AT 50% USAGE AT \$20 PER SQUARE FOOT.

RENT

The annual rent shall be \$ 14,360.00 payable in equal monthly installments in advance of \$ 1,196.67 each on the first day of each calendar month upon submittal in advance by LESSOR of two sworn invoices stating the amount due hereunder as required by law and regulations of the State Finance Department.

COVENANTS OF AGENCY

The said AGENCY hereby covenants with the LESSOR:

(a) to use and occupy the premises as office and storage purposes only and for no other object of purpose without written consent of the LESSOR:

(b) not at anytime to assign this agreement or to sublet the demised premises, or any portion thereof, without written consent of the LESSOR or his representative;

(c) to keep the premises in good order, reasonable wear and tear expected;

(d) to permit LESSOR and his representatives to enter the premises or any part thereof at all reasonable hours for the purpose of inspecting or exhibiting same or making such repairs or alterations as may be necessary for safety or preservation thereof;

(e) to permit LESSOR to place on the premises reasonable "For Rent" or "For Sale" signs and not to interfere with same;

(f) to surrender possession of the premises upon the termination of this lease, or any extension hereof as herein provided, in as good condition as when received, reasonable wear and tear and accidents happening by fire and other casualties expected;

(g) Agency agrees to use reasonable precautions in the conservation of energy and utilities.

COVENANTS OF LESSOR

The LESSOR covenants and agrees that it shall:

- (a) not discontinue any service or facility herein contracted for;
- (b) keep the demised premises in good repair including but not limited to, lighting, heating, air conditioning, roof, access, egress, sanitary facilities, water facilities, and other services incidental to the demised premises;
- (c) in the event the LESSOR shall, after notice in writing from AGENCY in regard to a specific condition, fail, refuse, or neglect to correct said condition, or in the event of an emergency constituting a hazard to health or safety of the AGENCY'S employees, property, or invitees, it shall then be lawful for the AGENCY, in addition to any other remedy the AGENCY may have, to make such repair at its own expense and deduct the amount from the from the rent that may become due hereunder;
- (d) unless otherwise waived or amended in writing, LESSOR agrees to provide AGENCY with services including, but not limited to heating, air conditioning, sewerage, water, janitorial service, and to be included in the rental payment;
- (e) the lease shall become null and void in the event said leased premises should be totally destroyed by fire, or other casualty including acts of God, and the liability of the AGENCY for rents thereafter occurring under the lease agreement shall cease upon the said happening of any said events, but if said leased premises are partially damaged by fire or other casualty, including acts of God, then the same shall be repaired and restored by the LESSOR as speedily ad possible, at the LESSOR'S own expense, and from date of such damage until completion of such repairs, abatement of rent shall be allowed to the AGENCY.
- (f) LESSOR hereby agrees to indemnify and hold the AGENCY harmless for and against any and all liability, loss, damage, cost, and expenses, including court cost and

attorney fees (whether or not litigation be commenced) of whatever nature or type, that the AGENCY may suffer, be put to pay or layout by reason of LESSOR'S failure to make leased facilities conform to all applicable local, state, and federal requirements so as to be accessible to individuals with disabilities.

CANCELLATION PRIVILEGE

It is expressly understood and agreed by the parties hereto that the AGENCY shall have the option to terminate this lease at the end of any fiscal year of the State of Alabama in the event the State Legislature fails to appropriate funds to AGENCY to make the rental payments set out herein which are due and payable under the terms of the lease during each ensuing fiscal year and that under no circumstances shall the commitment under this lease constitute a debt to the State of Alabama as prohibited by Section 213, Constitution of Alabama 1901, as amended by Amendment No. XXVI.

EXEMPTION

The AGENCY notwithstanding any provision of this lease, incorporations or amendments hereto, does not release or waive, expressly or implied its right to assert sovereign immunity or any other affirmative defense right it may have under law.

SUBORDINATION

The AGENCY'S rights under this lease shall remain subordinate to any bona-fide mortgage or deed to secure debt which is now, or may hereafter be placed upon the premises; provided that the AGENCY'S tenancy shall not be disturbed nor shall the covenants and conditions of this lease be invalidated or changed.

DEFAULT

If at anytime one party shall default in any of its covenants or obligations under this lease, the other party shall give written notice of the nature of the default. If the

default cannot be resolved within a reasonable period, the aggrieved party may cancel this agreement without further obligation.

RENEWAL

The LESSOR does hereby grant and give the AGENCY an option to renew this lease agreement at the end of the term of this lease for 2 additional one-year period (s) upon all the same terms and conditions as herein stated by giving LESSOR a ninety (90) day written notice prior to the expiration of the then existing term of its intention to so renew or extend.

MONTGOMERY CITY LEASES

In the event the State of Alabama or an entity thereof constructs, purchases, or expands an office building in the City of Montgomery for occupancy by AGENCY, or in the event existing State-owned office space becomes available in the City of Montgomery for occupancy by AGENCY, the AGENCY may cancel this lease by giving written notice to LESSOR of no less than six (6) months.

WITNESS OUR HANDS THIS 9 day of July, 20 07.

LESSOR:

AGENCY:

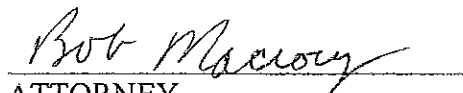

BY ITS PRESIDENT

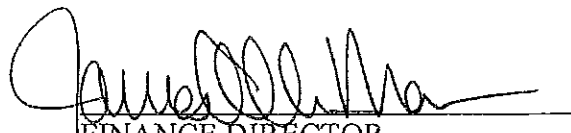

BY ITS EXECUTIVE DIRECTOR


BY ITS CHAIRPERSON

APPROVED FOR LEGALITY:

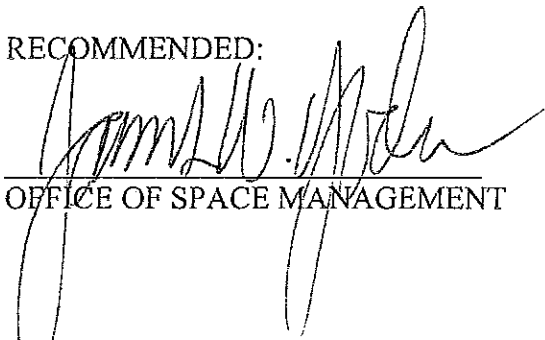
APPROVED:


ATTORNEY
DEPARTMENT OF FINANCE
(Montgomery County Leases)

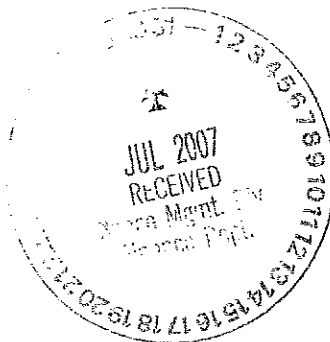

FINANCE DIRECTOR
(Montgomery County Leases)

RECOMMENDED:

APPROVED:


OFFICE OF SPACE MANAGEMENT


GOVERNOR
STATE OF ALABAMA



A second responding board member stated that, "Additionally, we need to rework the rent schedule between the two entities."

A licensee responding to our questionnaire stated, "They also pay rent \$3,500 per month or \$42,000 annually. The board's budget is \$86,000. I have been to that office on at least two occasions. That office space is at best about 8 x 12. How is it ethical to pay \$42,000 for one room? They have supposedly rented the same furniture for a shared person for 5 years now. Could they have not purchased it by now? What did the Education Director (the association's half of the employee use) during this time? There has to be more affordable rent in Montgomery. The financial relationship between the board and association should be investigated. It is not fair that our license fees are so high and it looks to me that the board is funding the association. They get \$72,000 of the total budget. If it's not illegal, it certainly is unethical."

Before a state agency leases office space, the Office of State Buildings & Space Management within the Department of Finance is normally contacted for leasing options. The Office of State Buildings & Space Management has adopted uniform standards for allocation of facilities owned or leased by the state. Space Management also investigates all requests for additional facilities needed by state agencies and makes recommendations concerning the need for and the best method of allocating or acquiring such facilities. The board's former executive director contacted Space Management in February, 2007 in search of some options to consider for lease. Space Management provided her with a list of rental properties in the same east Montgomery vicinity as the board's current office. Board records do not indicate any consideration of these options.

In two previous audits, one by John Segrest (December 1, 2004) and another by Tony Yarbrough (October 16, 2006), the audit states:

December 1, 2004-The Board owned no nonconsumable personal property. The Board utilizes Office Space and equipment provided under contract by the Assisted Living Association of Alabama.

October 16, 2006-The Board owns no nonconsumable personal property. The Board utilizes Office Space and equipment provided under contract by the Assisted Living Association of Alabama.

Our previous audits, including one by the author of this Significant Finding and one other Sunset review have never questioned the lease arrangement nor found it to be in violation of any Code, statute or practice. The current lease has been approved by the Office of Space Management. This approval was signed by Governor Riley and by the State Finance Director, Jim Main, dated 7/27/07.

5. The contract for facilities and staffing between the board and the Assisted Living Association was not bid in compliance with the state's bid law. The board contracted with the Assisted Living Association to provide the board with a computer and furnished office space for \$26,400/year and an association staff person for \$37,500/year to serve

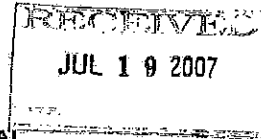
as the board's executive director,. Attorney General's Opinion # 2002-078 states that, "Contracts between state licensure boards and a consultant for the services of an executive director, administrative staff, equipment and/or physical facilities are subject to the competitive bid law." Although the competitive bid law [Code of Alabama 1975, Section 41-16-20 et seq] in Section 41-16-75 authorizes an exemption from bidding if a provider is the sole source of the needed goods or services, we find no duties of the board's executive director that are sufficiently different from those of other state licensing boards to qualify the executive director for this exemption.

The Attorney General's representative to the BOE, Ms. Bettie Carmack sent the following legal opinion to the auditor, Mr. Yarbrough. It was sent and received prior to his authoring of the Significant Finding to which it referred.



STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

TROY KING
ATTORNEY GENERAL



ALABAMA STATE HOUSE
11 SOUTH UNION STREET
MONTGOMERY, AL 36130
(334) 242-7300
WWW.AGO.STATE.AL.US

June 20, 2007

Tony Yarborough
Examiner of Public Accounts
VIA FAX ONLY: (334) 353-1331

Re: **Board of Examiners of Assisted Living Administrators
(BOE/ALA)**

Dear Mr. Yarborough:

Governor Riley has replaced most of the members of the BOE/ALA. The old members no longer have a say so in the Board's business. The current Board consists of the following:

Rita Van Dyke
Jimmy Law
Merlinda Nettles
Mamie Mahone (Current Member)
Kathy Tankersley (Current Member)
David Wilbanks (Current Member)
Tom McKinnon
George Smith

I have also been contacted regarding Ms. Findley's contract. Alabama Code Section 41-16-21 provides that the following may be excluded from the competitive bid process:


Competitive bidding shall not apply to: "contracts for the securing of the services of . . . individuals possessing a high degree of professional skill where the personality of the individual plays a decisive part . . ."

Ala. Code §41-16-21(a)(2006).

Ms. Findley was hired based upon her previous experience handling the Board's daily office activity, therefore, her contract was excluded from the bidding process. The Board submitted Ms. Findley's contract through the contract review board and it was approved. It is my legal opinion that the employment contract is valid.

Ms. Findley has also instructed me that there is a problem with the lease. The lease is currently being reviewed by the Office of Space Management and we will contact your legal department when we hear from the Office of Space Management. The competitive bidding process, however, does not apply to the purchase or lease of real property, only personal property. See Cotton Bayou Association, Inc. v. Dep't of Conservation, 622 So. 2d 924 (Ala. 1993) (The Alabama Supreme Court held that the negotiation of a lease related to real property was not subject to the competitive bid law.). If there are any legal questions in the future, please have the Examiners' legal counsel contact me.

Sincerely,



Bettie J. Carmack
*Assistant Attorney General
Civil Litigation Division*

Cc: Mamie Mahone
Chairwoman
State of Alabama Board of Examiners
Assisted Living Administrators
5921 Carmichael Road
Montgomery, AL 36117

Ms. Amy Findley
Executive Director
State of Alabama Board of Examiners
Assisted Living Administrators
5921 Carmichael Road
Montgomery, AL 36117



**State of Alabama Board of Examiners of
Assisted Living Administrators**

5921 Carmichael Road
Montgomery, Alabama 36117
www.boeala.state.al.us

Amy Findley
Executive Director

Telephone: (334) 262-6719
Fax: (334) 819-8715

May 22, 2007

Mr. Isaac Kervin
Purchasing Director
RSA Union Building
100 North Union Street
Suite 192
Montgomery, AL 36104

Dear Mr. Kervin:

The Board of Examiners of Assisted Living Administrators (BOE) established a professional contractual agreement with the Assisted Living Association of Alabama (ALAA) on April 4, 2007. This agreement requires the "Office Manager" of ALAA and the "Executive Director" of the BOE to be held by the same individual. The BOE has agreed to compensate ALAA by paying an annual amount of \$37,500 for the purpose of supplying an individual to perform the services of executive director on a permanent part-time basis.

According to ALA. Code 41-16-21 (a) (2000), the competitive bidding process does not apply if professional service contract meets the provisions of the professional services exemption. It has been determined by the BOE that the individual hired in this position must possess a high degree of skill and education in the assisted living industry in order to fulfill the "Executive Director" requirements. Thus, the BOE selected Amy Findley to perform these duties.

If you have any comments, please feel free to contact me at (205) 314-4160.

Sincerely:

Mamie Mahone
Mamie Mahone
Chairman

Contract Review Permanent Legislative Oversight Committee
Alabama State House
Montgomery, Alabama 36130

CONTRACT REVIEW REPORT

(Separate review report required for each contract)

Name of State Agency: Bd. of Examiners of Assisted Living Administrators

Name of Contractor: Assisted Living Association of Alabama

Contractor's Physical Street Address (No P.O. Box) 5921 Carmichael Rd. Montgomery AL
City ST

Is Contractor Registered with Alabama Secretary of State to do Business as a Corporation in Alabama?
YES ☒ NO ☐ If Yes, in what State is Contractor Incorporated? _____

Is Act 2001-955 Disclosure Form Included with this Contract? YES ☒ NO ☐
Was a Lobbyist/Consultant Used to Secure this Contract? YES ☐ NO ☒

If Yes, Give Name: _____

Contract Number: C7374601

Contract/Amendment Total: \$ 37,500.00 (estimate if necessary)

% State Funds: 100 % Federal Funds: _____ % Other Funds: _____

**Please Specify Source of Other Funds (Fees, Grants, etc.) _____

Date Contract Effective: 5/13/07 Date Contract Ends: 5/13/09

Type Contract: NEW: ☒ RENEWAL: _____ AMENDMENT: _____
If Renewal, was it originally Bid? Yes ☐ No ☐

If AMENDMENT, Complete A through C:

(A) Original contract total \$ _____

(B) Amended total prior to this amendment \$ _____

(C) Amended total after this amendment \$ _____

Was Contract Secured through Bid Process? YES ☐ NO ☒ Was lowest Bid accepted? Yes ☐ No ☐

Was Contract Secured through RFP Process? YES ☐ NO ☒

Summary of Contract Services to be Provided: Executive Director of
licensing authority for assisted living
administrators.

Why Contract Necessary AND why this service cannot be performed by merit employee: Special
knowledge regarding education, training
& licensing of assisted living administrators

I certify that the above information is correct.

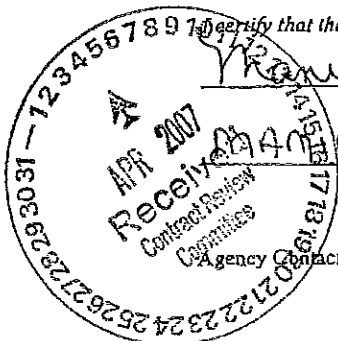
Kimie Mahone
Signature of Agency Head

KIMIE T. MAHONE
Printed Name

Frank D. Holden
Signature of Contractor

FRANK D. HOLDEN
Printed Name

Phone: _____



If this contract was not competitively Bid, why?

special knowledge

If this contract was not competitively Bid because the contractor is a sole source provider, please explain who made the sole source determination and on what basis:

Board of Examiners of Assisted Living Administrators & the Board of Assisted Living Association of Alabama approved the sole source provider based on individuals specialized

If contract was awarded by RFP, what process was used, how many vendors were contacted, and how many proposals were received: knowledge.

If this contract was not awarded through either Bid or RFP process, why?

Special Knowledge

If this contract was not awarded through either Bid or RFP process, how was it awarded?

approved by the Bd. of Examiners of Assisted Living Administrators & ratified by the Sunset Review Committee, Joint House & Senate.

Did agency attempt to hire a State Employee? If so who from Personnel Department did you talk to?

No yes. Current employee working out notice. Board could not afford \$58,000.00 salary & benefits within current budget.

How many additional contracts does contractor have with the State of Alabama and which agencies are they with?

NONE

Mamie O'Mahone

Signature of Agency Head



State of Alabama Disclosure Statement

(Required by Act 2001-955)

ASSISTED LIVING ASSOCIATION OF ALABAMA, INC.
ENTITY COMPLETING FORM
5921 CARMICHAEL ROAD
ADDRESS
MONTGOMERY AL 36117
CITY, STATE, ZIP
BOARD OF EXAMINERS OF ASSISTED LIVING
STATE AGENCY/DEPARTMENT THAT WILL RECEIVE GOODS, SERVICES, OR IS RESPONSIBLE FOR GRANT AWARD
5921 CARMICHAEL ROAD
ADDRESS
MONTG. AL 36117
CITY, STATE, ZIP
TELEPHONE NUMBER
334-262-5523
TELEPHONE NUMBER
(334) 262-6719

This form is provided with:

☒ Contract ☐ Proposal ☐ Request for Proposal ☐ Invitation to Bid ☐ Grant Proposal

Have you or any of your partners, divisions, or any related business units previously performed work or provided goods to any State Agency/Department in the current or last fiscal year?

☒ Yes ☐ No

If yes, identify below the State Agency/Department that received the goods or services, the type(s) of goods or services previously provided, and the amount received for the provision of such goods or services.

STATE AGENCY/DEPARTMENT	TYPE OF GOODS/SERVICES	AMOUNT RECEIVED
BOEAL	RENT/PERSONNEL SERVICES	FY 2005-06 \$72,000

Have you or any of your partners, divisions, or any related business units previously applied and received any grants from any State Agency/Department in the current or last fiscal year?

☐ Yes ☒ No

If yes, identify the State Agency/Department that awarded the grant, the date such grant was awarded, and the amount of the grant.

STATE AGENCY/DEPARTMENT	DATE GRANT AWARDED	AMOUNT OF GRANT
-------------------------	--------------------	-----------------

1. List below the name(s) and address(es) of all public officials/public employees with whom you, members of your immediate family, or any of your employees have a family relationship and who may directly personally benefit financially from the proposed transaction. Identify the State Department/Agency for which the public officials/public employees work. (Attach additional sheets if necessary.)

NAME OF PUBLIC OFFICIAL/EMPLOYEE	ADDRESS	STATE DEPARTMENT/AGENCY
NONE		

2. List below the name(s) and address(es) of all family members of public officials/public employees with whom you, members of your immediate family, or any of your employees have a family relationship and who may directly personally benefit financially from the proposed transaction. Identify the public officials/public employees and State Department/Agency for which the public officials/public employees work. (Attach additional sheets if necessary.)

NAME OF FAMILY MEMBER	ADDRESS	NAME OF PUBLIC OFFICIAL/PUBLIC EMPLOYEE	STATE DEPARTMENT/AGENCY WHERE EMPLOYED
-----------------------	---------	---	--

NONE

If you identified individuals in items one and/or two above, describe in detail below the direct financial benefit to be gained by the public officials, public employees, and/or their family members as the result of the contract, proposal, request for proposal, invitation to bid, or grant proposal. (Attach additional sheets if necessary.)

Describe in detail below any indirect financial benefits to be gained by any public official, public employee, and/or family members of the public official or public employee as the result of the contract, proposal, request for proposal, invitation to bid, or grant proposal. (Attach additional sheets if necessary.)

List below the name(s) and address(es) of all paid consultants and/or lobbyists utilized to obtain the contract, proposal, request for proposal, invitation to bid, or grant proposal:

NAME OF PAID CONSULTANT/LOBBYIST	ADDRESS
----------------------------------	---------

By signing below, I certify under oath and penalty of perjury that all statements on or attached to this form are true and correct to the best of my knowledge. I further understand that a civil penalty of ten percent (10%) of the amount of the transaction, not to exceed \$10,000.00, is applied for knowingly providing incorrect or misleading information.

Frank A. Holden *April 4, 2007*
Signature Date

Paul J. Bo *4/4/07* Date Notary Expires
Notary's Signature Date

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Nov 17, 2010
BONDED THRU NOTARY PUBLIC UNDERWRITERS

Act 2001-955 requires the disclosure statement to be completed and filed with all proposals, bids, contracts, or grant proposals to the State of Alabama in excess of \$5,000.

Disclosure Statement Information and Instructions

Act 2001-955 requires the disclosure statement to be completed and filed with all proposals, bids, contracts, or grant proposals to the State of Alabama in excess of \$5,000. The disclosure statement is not required for contracts for gas, water, and electric services where no competition exists, or where rates are fixed by law or ordinance. In circumstances where a contract is awarded by competitive bid, the disclosure statement shall be required only from the person receiving the contract and shall be submitted within ten (10) days of the award.

A copy of the disclosure statement shall be filed with the awarding entity and the Department of Examiners of Public Accounts and if it pertains to a state contract, a copy shall be submitted to the Contract Review Permanent Legislative Oversight Committee. The address for the Department of Examiners of Public Accounts is as follows: 50 N. Ripley Street, Room 3201, Montgomery, Alabama 36130-2101. If the disclosure statement is filed with a contract, the awarding entity should include a copy with the contract when it is presented to the Contract Review Permanent Legislative Oversight Committee.

The State of Alabama shall not enter into any contract or appropriate any public funds with any person who refuses to provide information required by Act 2001-955.

Pursuant to Act 2001-955, any person who knowingly provides misleading or incorrect information on the disclosure statement shall be subject to a civil penalty of ten percent (10%) of the amount of the transaction, not to exceed \$10,000.00. Also, the contract or grant shall be voidable by the awarding entity.

Definitions as Provided in Act 2001-955

Family Member of a Public Employee — The spouse or a dependent of the public employee.

Family Member of a Public Official — The spouse, a dependent, an adult child and his or her spouse, a parent, a spouse's parents, a sibling and his or her spouse, of the public official.

Family Relationship — A person has a family relationship with a public official or public employee if the person is a family member of the public official or public employee.

Person — An individual, firm, partnership, association, joint venture, cooperative, or corporation, or any other group or combination acting in concert.

Public Official and Public Employee - These terms shall have the same meanings ascribed to them in Sections 36-25-1(23) and 36-25-1(24), Code of Alabama 1975, (see below) except for the purposes of the disclosure requirements of this act, the terms shall only include persons in a position to influence the awarding of a grant or contract who are affiliated with the awarding entity. Notwithstanding the foregoing, these terms shall also include the Governor, Lieutenant Governor, members of the cabinet of the Governor, and members of the Legislature.

Section 36-25-1(23), Code of Alabama 1975, defines a **public employee** as any person employed at the state, county or municipal level of government or their instrumentalities, including governmental corporations and authorities, but excluding employees of hospitals or other health care corporations including contract employees of those hospitals or other health care corporations, who is paid in whole or in part from state, county, or municipal funds. For purposes of this chapter, a public employee does not include a person employed on a part-time basis whose employment is limited to providing professional services other than lobbying, the compensation for which constitutes less than 50 percent of the part-time employee's income.

Section 36-25-1(24), Code of Alabama 1975, defines a **public official** as any person elected to public office, whether or not that person has taken office, by the vote of the people at state, county, or municipal level of government or their instrumentalities, including governmental corporations, and any person appointed to a position at the state, county, or municipal level of government or their instrumentalities, including governmental corporations. For purposes of this chapter, a public official includes the chairs and vice-chairs or the equivalent offices of each state political party as defined in Section 17-16-2, Code of Alabama 1975.

Instructions

Complete all lines as indicated. If an item does not apply, denote N/A (not applicable). If you cannot include required information in the space provided, attach additional sheets as necessary.


The form must be signed, dated, and notarized prior to submission.

IMMIGRATION STATUS

I hereby attest that all workers on this project are either citizens of the United States or are in a proper and legal immigration status that authorizes them to be employed for pay within the United States.



Signature of Contractor



Witness

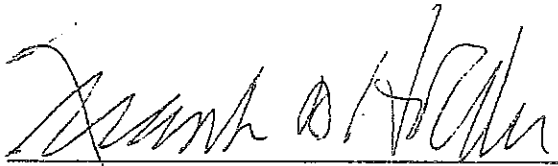
**CONTRACT TO PROVIDE EXECUTIVE DIRECTOR OF
ALABAMA BOARD OF EXAMINERS OF
ASSISTED LIVING ADMINISTRATORS**

1. The Assisted Living Association of Alabama, Inc. (hereinafter referred to as "ALAA") does hereby agree to provide the Alabama Board of Examiners of Assisted Living Administrators (hereinafter referred to as "BOE") with an individual to perform the service of executive director for the BOE.
2. The BOE agrees that the "Office Manager" of ALAA and the "Executive Director" of the BOE shall be held by the same individual, with all responsibilities and assignments performed by that individual.
3. The BOE agrees to compensate ALAA by paying an annual amount of \$37,500 for the purpose of supplying an individual to perform the service of executive director on a permanent part-time basis. This amount is to be paid to ALAA in increments of \$3,125 per month beginning May 13, 2007.
4. ALAA is responsible for paying all statutory requirements, including but not limited to FICA, for the individual serving as Executive Director of the BOE.
5. The BOE retains the authority to terminate its relationship with any individual supplied by ALAA to serve as the BOE's Executive Director. The BOE will provide thirty day written notice prior to the termination to both the individual performing the duties as Executive Director and ALAA.
6. Upon termination of the relationship, ALAA may offer a replacement for the BOE Executive Director position. If, however, an Executive Director that is satisfactory to the majority of the BOE is not chosen by the ALAA within two months from the date of termination, the BOE retains the authority to select its own Executive Director.
7. It is agreed that the terms and commitments contained herein shall not be constituted as a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama 1901, as amended by the Amendment Number 26. It is further agreed that if any provision of this contract shall contravene any statute or Constitutional provision or amendment, either now in effect or which may, during the course of this contract, be enacted, then that conflicting provision in the contract shall be deemed null and void. The Contractor's sole remedy for the settlement of any and all disputes arising under the terms of this agreement shall be limited to the filing of a claim with the Board of Adjustment for the State of Alabama.


For any all disputes arising under the terms of this contract, the parties hereto agree, in compliance with the recommendations of the Governor and Attorney General, when considering settlement of such disputes, to utilize

appropriate forms of non-binding alternative mediation by and through the Attorney General's Office of Administrative hearings or where appropriate, private mediators.

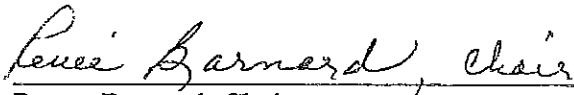
8. The terms of this contract shall commence on May 13, 2007 and expire May 13, 2009.



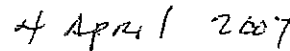
Frank Holden, President
Assisted Living Association of Alabama, Inc.



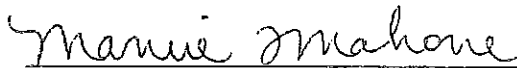
Date



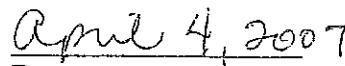
Renee Barnard, Chair
Assisted Living Association of Alabama, Inc.



Date



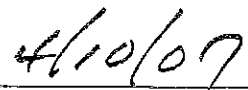
Mamie Mahone, Chair
Alabama Board of Examiners of Assisted Living
Administrators



Date




Governor



Date

Reviewed by Contract
Review Committee

APR 10 2007

Alabama Legislature

Dianne Harper, Clerk
07C374001



ASSISTED LIVING ASSOCIATION
OF ALABAMA

March 13, 2007

Ms. Mamie Mahone, RN, ALA
Chair
Board of Examiners of Assisted Living Administrators
% St. Martin's-in-the-Pines
4941 Montevallo Road
Birmingham, Alabama 35210

RE: Letter of Agreement between the Assisted Living Association
And the Board of Examiners of Assisted Living Administrators

CONTRACT STAFFING AGREEMENT

Dear Ms. Mahone:

The following "Letter of Agreement" constitutes the entirety of the Agreement between the Assisted Living Association of Alabama, Inc. (ALAA) and the Board of Examiners of Assisted Living Administrators (BOE) for provision of a staff person to serve as the BOE Executive Director.

- The BOE "Executive Director" shall be provided to the BOE at the rate of \$37,500 per annum, billed monthly at the rate of \$3,125 per month inclusive of all taxes, insurance, employee benefits, and statutory employee costs;
- The BOE "Executive Director" shall provide a log of BOE-specific activities no less nor more than 30 hours per week;
- The ALAA President and the "Executive Director" shall execute Confidentiality Agreements with the BOE covering all matters related to licensing administrators, confidential non-public matters of the board meetings, and disciplinary matters; breach of this agreement shall constitute grounds for immediate dismissal of the Executive Director.

PAGE TWO OF TWO
BOE/ALAA
LETTER OF AGREEMENT
CONTRACT STAFFING

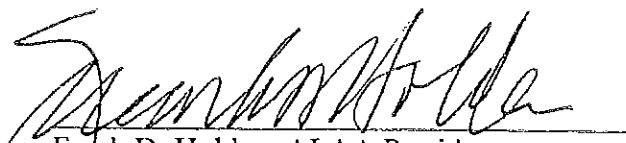
- Six months from the beginning date of this agreement BOE shall perform a review of the Executive Director's job performance to evaluate satisfaction and number of hours required for the task, with the possibility of decreasing to a 20 hour/week position. Salary will be adjusted accordingly.
- In its statutory role as "Advisory Board" to the BOE, the ALAA Board Chair or its designee will communicate on all non-confidential matters with the BOE Chair.
- The ALAA Board Chair or designee will direct questions related to the management of the BOE to the Chairperson.

The Agreement shall commence on May 12, 2007, except if the current BOE Executive Director vacates the position before May 12, 2007, in which case, the "Executive Director" charges will commence on the next business day following the date of the vacancy.

This Agreement shall expire on September 30, 2008 unless modified by mutual agreement.

AGREED this date: 4/3, 2007


Mamie Mahone, BOE Chair


Frank D. Holden, ALAA President

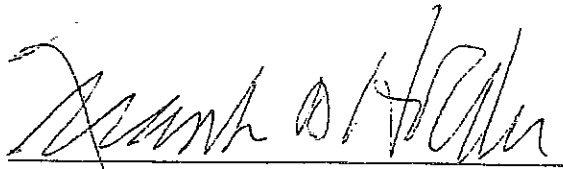
**CONTRACT TO PROVIDE EXECUTIVE DIRECTOR OF
ALABAMA BOARD OF EXAMINERS OF
ASSISTED LIVING ADMINISTRATORS**

1. The Assisted Living Association of Alabama, Inc. (hereinafter referred to as "ALAA") does hereby agree to provide the Alabama Board of Examiners of Assisted Living Administrators (hereinafter referred to as "BOE") with an individual to perform the service of executive director for the BOE.
2. The BOE agrees that the "Office Manager" of ALAA and the "Executive Director" of the BOE shall be held by the same individual, with all responsibilities and assignments performed by that individual.
3. The BOE agrees to compensate ALAA by paying an annual amount of \$37,500 for the purpose of supplying an individual to perform the service of executive director on a permanent part-time basis. This amount is to be paid to ALAA in increments of \$3,125 per month beginning May 13, 2007.
4. ALAA is responsible for paying all statutory requirements, including but not limited to FICA, for the individual serving as Executive Director of the BOE.
5. The BOE retains the authority to terminate its relationship with any individual supplied by ALAA to serve as the BOE's Executive Director. The BOE will provide thirty day written notice prior to the termination to both the individual performing the duties as Executive Director and ALAA.
6. Upon termination of the relationship, ALAA may offer a replacement for the BOE Executive Director position. If, however, an Executive Director that is satisfactory to the majority of the BOE is not chosen by the ALAA within two months from the date of termination, the BOE retains the authority to select its own Executive Director.
7. It is agreed that the terms and commitments contained herein shall not be constituted as a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama 1901, as amended by the Amendment Number 26. It is further agreed that if any provision of this contract shall contravene any statute or Constitutional provision or amendment, either now in effect or which may, during the course of this contract, be enacted, then that conflicting provision in the contract shall be deemed null and void. The Contractor's sole remedy for the settlement of any and all disputes arising under the terms of this agreement shall be limited to the filing of a claim with the Board of Adjustment for the State of Alabama.

For any all disputes arising under the terms of this contract, the parties hereto agree, in compliance with the recommendations of the Governor and Attorney General, when considering settlement of such disputes, to utilize

appropriate forms of non-binding alternative mediation by and through the Attorney General's Office of Administrative hearings or where appropriate, private mediators.

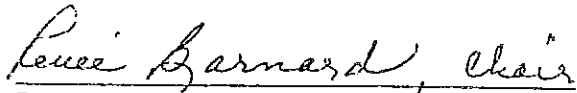
8. The terms of this contract shall commence on May 13, 2007 and expire May 13, 2009.



Frank Holden, President
Assisted Living Association of Alabama, Inc.

4 Apr 2007

Date



Renee Barnard, Chair
Assisted Living Association of Alabama, Inc.

4 April 2007

Date



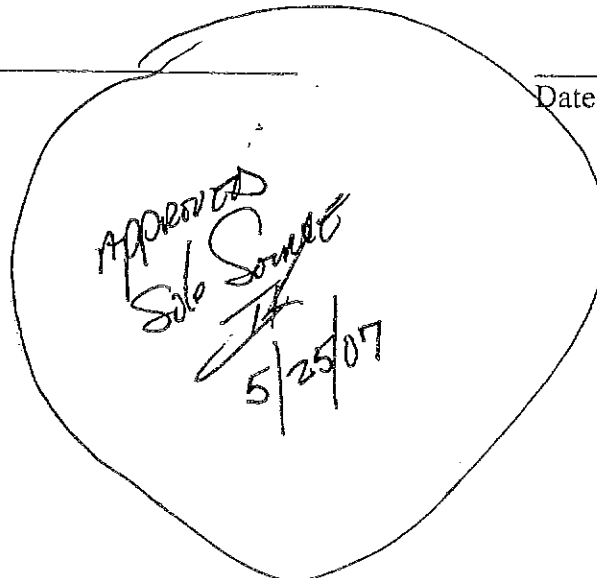
Mamie Mahone, Chair
Alabama Board of Examiners of Assisted Living
Administrators

April 4, 2007

Date

Governor

Date



CONTRACT REVIEW REPORT

(Separate review report required for each contract)

Name of State Agency: Bd. of Examiners of Assisted Living Administrators

Name of Contractor: Assisted Living Association of Alabama

Contractor's Physical Street Address (No P.O. Box) 5921 Carmichael Rd. Montgomery AL
City ST

Is Contractor Registered with Alabama Secretary of State to do Business as a Corporation in Alabama?
YES ☒ NO ☐ If Yes, in what State is Contractor Incorporated? _____

Is Act 2001-955 Disclosure Form Included with this Contract? YES ☒ NO ☐

Was a Lobbyist/Consultant Used to Secure this Contract? YES ☐ NO ☒

If Yes, Give Name: _____

Contract Number: _____

Contract/Amendment Total: \$ 37,500.00 (estimate if necessary)

% State Funds: 100 % Federal Funds: _____ % Other Funds: _____ **

**Please Specify Source of Other Funds (Fees, Grants, etc.) _____

Date Contract Effective: _____ Date Contract Ends: _____

Type Contract: NEW: ☒ RENEWAL: _____ AMENDMENT: _____
If Renewal, was it originally Bid? Yes ☐ No ☐

If AMENDMENT, Complete A through C:

(A) Original contract total \$ _____

(B) Amended total prior to this amendment \$ _____

(C) Amended total after this amendment \$ _____

Was Contract Secured through Bid Process? YES ☐ NO ☒ Was lowest Bid accepted? Yes ☐ No ☐

Was Contract Secured through RFP Process? YES ☐ NO ☒

Summary of Contract Services to be Provided: Executive Director of
licensing authority for assisted living
administrators.

Why Contract Necessary AND why this service cannot be performed by merit employees: Special
knowledge regarding education, training
& licensing of assisted living administrators

I certify that the above information is correct.

Mamie Mahone

Signature of Agency Head

MAMIE T. MAHONE

Printed Name

Frank D. Holden

Signature of Contractor

FRANK D. HOLDEN

Printed Name

Agency Contact: _____ Phone: _____

If this contract was not competitively Bid, why?

special knowledge

If this contract was not competitively Bid because the contractor is a sole source provider, please explain who made the sole source determination and on what basis:

Board of Examiners of Assisted Living Administrators & the Board of Assisted Living Association of Alabama approved the sole source provider based on individuals specialized knowledge.

If contract was awarded by RFP, what process was used, how many vendors were contacted, and how many proposals were received:

If this contract was not awarded through either Bid or RFP process, why?

special knowledge

If this contract was not awarded through either Bid or RFP process, how was it awarded?

approved by the Bd. of Examiners of Assisted Living Administrators & ratified by the Sunset Review Committee, joint House & Senate.

Did agency attempt to hire a State Employee? If so who from Personnel Department did you talk to?

NO

How many additional contracts does contractor have with the State of Alabama and which agencies are they with?

NONE

Manie O'Mahone

Signature of Agency Head



State of Alabama Disclosure Statement

(Required by Act 2001-955)

ASSISTED LIVING ASSOCIATION OF ALABAMA, INC.

ENTITY COMPLETING FORM

5921 CARMICHAEL ROAD

ADDRESS

MONTEOMERY AL 36117

CITY, STATE, ZIP

TELEPHONE NUMBER

BOARD OF EXAMINERS OF ASSISTED LIVING

334.262-

STATE AGENCY/DEPARTMENT THAT WILL RECEIVE GOODS, SERVICES, OR IS RESPONSIBLE FOR GRANT AWARD

5921 CARMICHAEL ROAD

5523

ADDRESS

MONTE AL 36117

CITY, STATE, ZIP

TELEPHONE NUMBER

(334) 262-6719

This form is provided with:



Contract



Proposal



Request for Proposal



Invitation to Bid



Grant Proposal

Have you or any of your partners, divisions, or any related business units previously performed work or provided goods to any State Agency/Department in the current or last fiscal year?



Yes



No

If yes, identify below the State Agency/Department that received the goods or services, the type(s) of goods or services previously provided, and the amount received for the provision of such goods or services.

STATE AGENCY/DEPARTMENT

TYPE OF GOODS/SERVICES

AMOUNT RECEIVED

BOEAL

RENT/PERSONNEL SERVICES

FY 2005-06

\$72,000

Have you or any of your partners, divisions, or any related business units previously applied and received any grants from any State Agency/Department in the current or last fiscal year?



Yes



No

If yes, identify the State Agency/Department that awarded the grant, the date such grant was awarded, and the amount of the grant.

STATE AGENCY/DEPARTMENT

DATE GRANT AWARDED

AMOUNT OF GRANT

1. List below the name(s) and address(es) of all public officials/public employees with whom you, members of your immediate family, or any of your employees have a family relationship and who may directly personally benefit financially from the proposed transaction. Identify the State Department/Agency for which the public officials/public employees work. (Attach additional sheets if necessary.)

NAME OF PUBLIC OFFICIAL/EMPLOYEE

ADDRESS

STATE DEPARTMENT/AGENCY

NONE

2. List below the name(s) and address(es) of all family members of public officials/public employees with whom you, members of your immediate family, or any of your employees have a family relationship and who may directly personally benefit financially from the proposed transaction. Identify the public officials/public employees and State Department/Agency for which the public officials/public employees work. (Attach additional sheets if necessary.)

NAME OF FAMILY MEMBER	ADDRESS	NAME OF PUBLIC OFFICIAL OR PUBLIC EMPLOYEE	STATE DEPARTMENT/ AGENCY WHERE EMPLOYED
-----------------------	---------	--	---

NONE

If you identified individuals in items one and/or two above, describe in detail below the direct financial benefit to be gained by the public officials, public employees, and/or their family members as the result of the contract, proposal, request for proposal, invitation to bid, or grant proposal. (Attach additional sheets if necessary.)

Describe in detail below any indirect financial benefits to be gained by any public official, public employee, and/or family members of the public official or public employee as the result of the contract, proposal, request for proposal, invitation to bid, or grant proposal. (Attach additional sheets if necessary.)

List below the name(s) and address(es) of all paid consultants and/or lobbyists utilized to obtain the contract, proposal, request for proposal, invitation to bid, or grant proposal:

NAME OF PAID CONSULTANT/LOBBYIST	ADDRESS
----------------------------------	---------

By signing below, I certify under oath and penalty of perjury that all statements on or attached to this form are true and correct to the best of my knowledge. I further understand that a civil penalty of ten percent (10%) of the amount of the transaction, not to exceed \$10,000.00, is applied for knowingly providing incorrect or misleading information.

Frank A. Holden April 4, 2007
Signature Date

Paul J. [Signature] 4/4/07
Notary's Signature Date Date Notary Expires

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Nov 17, 2010
BONDED THRU NOTARY PUBLIC UNDERWRITERS

act 2001-955 requires the disclosure statement to be completed and filed with all proposals, bids, contracts, or grant proposals to the State of Alabama in excess of \$5,000.

Disclosure Statement Information and Instructions

Act 2001-955 requires the disclosure statement to be completed and filed with all proposals, bids, contracts, or grant proposals to the State of Alabama in excess of \$5,000. The disclosure statement is not required for contracts for gas, water, and electric services where no competition exists, or where rates are fixed by law or ordinance. In circumstances where a contract is awarded by competitive bid, the disclosure statement shall be required only from the person receiving the contract and shall be submitted within ten (10) days of the award.

A copy of the disclosure statement shall be filed with the awarding entity and the Department of Examiners of Public Accounts and if it pertains to a state contract, a copy shall be submitted to the Contract Review Permanent Legislative Oversight Committee. The address for the Department of Examiners of Public Accounts is as follows: 50 N. Ripley Street, Room 3201, Montgomery, Alabama 36130-2101. If the disclosure statement is filed with a contract, the awarding entity should include a copy with the contract when it is presented to the Contract Review Permanent Legislative Oversight Committee.

The State of Alabama shall not enter into any contract or appropriate any public funds with any person who refuses to provide information required by Act 2001-955.

Pursuant to Act 2001-955, any person who knowingly provides misleading or incorrect information on the disclosure statement shall be subject to a civil penalty of ten percent (10%) of the amount of the transaction, not to exceed \$10,000.00. Also, the contract or grant shall be voidable by the awarding entity.

Definitions as Provided in Act 2001-955

Family Member of a Public Employee — The spouse or a dependent of the public employee.

Family Member of a Public Official — The spouse, a dependent, an adult child and his or her spouse, a parent, a spouse's parents, a sibling and his or her spouse, of the public official.

Family Relationship — A person has a family relationship with a public official or public employee if the person is a family member of the public official or public employee.

Person — An individual, firm, partnership, association, joint venture, cooperative, or corporation, or any other group or combination acting in concert.

Public Official and Public Employee — These terms shall have the same meanings ascribed to them in Sections 36-25-1(23) and 36-25-1(24), Code of Alabama 1975, (see below) except for the purposes of the disclosure requirements of this act, the terms shall only include persons in a position to influence the awarding of a grant or contract who are affiliated with the awarding entity. Notwithstanding the foregoing, these terms shall also include the Governor, Lieutenant Governor, members of the cabinet of the Governor, and members of the Legislature.

Section 36-25-1(23), Code of Alabama 1975, defines a **public employee** as any person employed at the state, county or municipal level of government or their instrumentalities, including governmental corporations and authorities, but excluding employees of hospitals or other health care corporations including contract employees of those hospitals or other health care corporations, who is paid in whole or in part from state, county, or municipal funds. For purposes of this chapter, a public employee does not include a person employed on a part-time basis whose employment is limited to providing professional services other than lobbying, the compensation for which constitutes less than 50 percent of the part-time employee's income.

Section 36-25-1(24), Code of Alabama 1975, defines a **public official** as any person elected to public office, whether or not that person has taken office, by the vote of the people at state, county, or municipal level of government or their instrumentalities, including governmental corporations, and any person appointed to a position at the state, county, or municipal level of government or their instrumentalities, including governmental corporations. For purposes of this chapter, a public official includes the chairs and vice-chairs or the equivalent offices of each state political party as defined in Section 17-16-2, Code of Alabama 1975.

Instructions

Complete all lines as indicated. If an item does not apply, denote N/A (not applicable). If you cannot include required information in the space provided, attach additional sheets as necessary.


The form must be signed, dated, and notarized prior to submission.

IMMIGRATION STATUS

I hereby attest that all workers on this project are either citizens of the United States or are in a proper and legal immigration status that authorizes them to be employed for pay within the United States.



Signature of Contractor



Witness

Finally; during an exit conference with Tony Yarborough (Auditor) in early October 2006, we discussed this very issue with Mr. Yarborough. This conversation is reflected in the 10/9/06 Board minutes. He acknowledged the need for industry professional skills for our position and did not encourage or direct us to utilize the competitive bid process. The Contract Review Board has approved the current Executive Director's contract so this should no longer be an issue.

6. The board's enabling statutes contain a citizenship requirement that may be unconstitutional. The Code of Alabama 1975, Section 34-2A-8(a) provides that, "The board shall admit to examination for licensure as an assisted living administrator any candidate who submits evidence of good moral character and suitability as prescribed by the board and who submits evidence to the board that he or she is at least 19 years of age, a citizen of the United States, or that he or she has duly declared his or her intention of becoming a citizen of the United States, that he or she is a high school graduate or has completed an educational program equivalent thereto, and that he or she has completed any additional educational requirements prescribed by the board." The U. S. Supreme Court has held that refusal of a professional license based solely upon lack of citizenship is unconstitutional. In *re Griffiths*, 413 U. S. 717 (1973), the United States Supreme Court held that exclusion of aliens from the practice of law violates the Equal Protection Clause of the Fourteenth Amendment. Also, the U. S. Supreme Court in *Examining Board v. Flores De Otero*, 426 U. S. 572 (1976) held that "The statutory restriction on the ability of aliens to engage in the otherwise lawful private practice of civil engineering is plainly unconstitutional."

The Board's Counsel has offered the following response to this audit finding:

"The Supreme Court has not issued a per se' rule that all statutes that exclude an applicant based upon citizenship (i.e., alienage) are unconstitutional. The United States Supreme Court has held that any statute that excludes an individual based upon alienage has to pass the strict scrutiny test. This means that if, and only if, the Board's statute is challenged, the Board will have to state during the judicial action a compelling state interest why it requires applicants for licensure to be United States citizens. See Fahy v. Comm'r of the New Hampshire Dep't of Safety, 2006 WL 827805, at *11 (D.N.H. Mar. 29, 2006) quoting Graham v. Richardson, 403 U.S. 365, 372 (1971)("[C]lassifications based on alienage, like those based on nationality or race, are inherently suspect and subject to close judicial scrutiny."); City of Cleburne, Texas v. Cleburne Living Center, 473 U.S. 432, 440 (1985)(When a statute classifies by race, alienage, or national origin, it will be sustained only if it is suitably tailored to serve a compelling state interest).

7. The board does not receive notice of discrepancies relative to assisted living administration resulting from surveys of assisted living facilities by the Department of Public Health. The Department of Public Health routinely conducts surveys of assisted living facilities in the state. Discrepancies discovered during a survey can be related to the actions of board licensees. According to the Supervisor of the

Assisted Living Unit of the Alabama Department of Public Health, such discrepancies are reported to the Assisted Living Association by telephone, but are not reported to the Board of Assisted Living Administrators. The executive director for the Board of Assisted Living Administrators also stated that the board does not receive reports of such discrepancies from the Department of Public Health.

- ***In finding #3 the auditor makes note of an actual complaint received from the Alabama Department of Public Health. The finding states that "The board does not receive notice of discrepancies relative to assisted living administration resulting from surveys of assisted living facilities by the Department of Public Health. The Department of Public Health routinely conducts surveys of assisted living facilities in the state. Discrepancies discovered during a survey can be related to the actions of board licenses. In his Significant Finding #3 above, auditor states that "During the November 21, 2006 board meeting, the board received notice from the Alabama Department of Public Health (ADPH) of this condition. During an audit/survey of an assisted living facility ADPH found that the administrator's provisional license had been approved by the board although she had indicated a felony conviction on her application." The BOE does not receive notice from the ADPH on every instance they may have uncovered, nor can we compel them to do so. We have asserted our need to be informed and now have a method for such communication. On 7/24/07 the Board's Executive Director spoke with Diane A. Mann, Supervisor Assisted Living Unit, ADPH to again request that such instances involving Administrators are reported to the BOE. In an email dated 7/24/07, Ms. Mann states "I have instructed the ALF surveyors to complete the form below when they encounter an unlicensed Administrator. The form is then given to the ALF secretary who will fax it to the BOE."***

STATUS OF PRIOR FINDINGS & SIGNIFICANT ITEMS

All prior findings have been resolved, except the following:

Prior Finding - The board did not follow the process required by the state's Administrative Procedure Act for creating an administrative rule. During its September 24, 2004 board meeting, the board approved an Exigent Circumstance/Alternative Continuing Education Plan, where the board approves an "entity" to develop a self-study program due to exigent circumstances (hurricane, pregnancy, etc.). These programs are presented to the board for approval on a case-by-case basis.

Prior Recommendation - The board should follow the rule-making requirements of the Administrative Procedure Act when making this rule.

Current Status - The issue remains unresolved. As of April 2, 2007, the board had not submitted the rule change to the Legislative Reference

Service for advertisement and public inspection. A rule not processed in accordance with the requirements of the Administrative Procedure Act is void, according to law.

The board's enabling statutes in the Code of Alabama 1975, Section 34-2A-5 provides that, "The Alabama Administrative Procedure Act shall govern all rule-making proceedings of the board."

The Exigent Circumstance/Alternative Continuing Education Plan created at the September 24, 2004 Board meeting and notated in the Board minutes deals solely with the exigent circumstances of natural disasters and not childbirth, etc.

The Board developed the Exigent Circumstance CEU Plan for Organizations that had scheduled CEU classes & had to cancel the classes due to Hurricane Ivan. The Board did not view this as a "rule" which would require a change in our Regulations and require going through the motions of "The Administrative Procedure Act", which takes months. At the time we were in "crisis" mode, following Hurricane Ivan. To go through the Administrative Procedure Process would have meant loss of license for several individuals, due to the time constraints of this process. Our major concern as is our focus was ensuring that each facility has a licensed administer for the well-being of the public. How could we have justified having facilities without a licensed Administrator in place and how could we reconcile the personal cost and time to these individuals for re-licensing/re-testing? Individuals who were enrolled in CEU classes with imminent license renewal dates had their classes cancelled (as was the ALAA Conference) and were in immediate need to obtain the CEU's which they had scheduled and in many cases had paid in advance to attend. Regarding CEU's, the Boards Rules state, in Chapter 135-X-6 (5): "If the Board finds that programs of training and instruction conducted within the State are not sufficient in number or content to enable assisted living administrators to meet requirements established by law and these Rules and Regulations, it may institute and conduct or arrange with others to conduct one or more such programs, and shall make provisions for their accessibility to residents of this state. The Board may approve programs conducted within and without this state as sufficient to meet education requirements established by law and these Rules and Regulations." During and immediately following hurricane Ivan, there were not programs of training sufficient in number to enable Alf administrators to meet the requirements established by law--especially for those who relied upon the ALAA conference or other pre-paid CEU classes and who had renewal dates during this time frame.



ASSISTED LIVING ASSOCIATION
OF ALABAMA

August 6, 2007

Ms. Amy Findley
Executive Director
Alabama Board of Examiners of Assisted Living Administrators
5921 Carmichael Road
Montgomery, Alabama 36117

Dear Ms. Findley:

In response to your question regarding ADPH notification to the ALAA of deficient practices found in surveys conducted by the ALF Section of the department I can assure you that there has been no such practice.

Apparently, the Alabama Board of Examiners of Public Accounts auditor, Mr. Tony Yarborough cited the ABOEALA for a deficiency because ADPH did not notify you of deficiencies cited against ALF Administrators.

At no time since the creation of the ALBOEALA has the Department of Public Health routinely notified the ALAA of administrator problems. I have spoken with Dianne Mann, Supervisor of the ALF Section and she informed me that they will begin to do so in the future.

I hope that this clears up any misunderstanding by the Board of Examiners of Public Accounts that ALAA has failed to forward any pertinent information regarding licensed administrators that had been supplied to us by the ADPH.

Cordially,

Frank D. Holden
President

CC: Renee Barnard, ALA, ALAA Chair
Mamie Mahone, ALA, ALBOEALA Chair